

Exhibit F

Transcript of Detroit City Council Public
Hearings on April 10, 2008

Committee of the Whole
Legislative Hearings
2 Woodward Avenue, 13th Floor
Detroit, Michigan
Thursday, April 10, 2008
9:05 a.m.

APPEARANCES:

DETROIT CITY COUNCIL
MEMBERS:

KENNETH COCKREL, JR., PRESIDENT
MONICA CONYERS, PRESIDENT PRO TEM
JOANN WATSON
SHEILA COCKREL
BARBARA-ROSE COLLINS
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1 Detroit, Michigan

2 Thursday, April 10, 2008 - 9:05 a.m.

3 * * * * *

4 P R O C E E D I N G S

5 COUNCIL PRESIDENT PRO TEM CONYERS:

6 Good morning.

7 UNIDENTIFIED SPEAKER: Good morning.

8 COUNCIL PRESIDENT PRO TEM CONYERS:

9 This is Detroit City Council. I'm President Pro Tem
10 Monica Conyers, and this is a public hearing day
11 today, April the 10th. This public hearing is called
12 as related matters to the Brown/Nelthrope and Harris
13 settlement and related matters, and we will adjourn
14 until 10:00 o'clock a.m.

15 (WHEREUPON, a brief recess was taken
16 from 9:05 a.m. to 10:04 a.m.)

17 COUNCIL PRESIDENT COCKREL: Good
18 morning.

19 MULTIPLE SPEAKERS: Good morning.

20 COUNCIL PRESIDENT COCKREL: I'd like
21 to call this Detroit City Council Committee of the
22 Whole to order, or I should say back to order. And
23 the purpose of today's hearing, which is the April
24 10th hearing, is continue investigative hearings into
25 some of the issues surrounding the whistleblower

1 case, and the issues surrounding the case of Brown,
2 Nelthrope and Harris versus the City of Detroit.

3 Once again, this is our second day of
4 hearings. Our first witness for today will be Mr.
5 Samuel McCargo, who is here and has joined us at the
6 table. Do you want to introduce who you have with
7 you?

8 MR. MCCARGO: Mr. George Bedrosian --
9 counsel.

10 COUNCIL PRESIDENT COCKREL: All right.
11 And the first item of business, Mr. McCargo, is you
12 need to be administered the oath, so if you could
13 walk over here and Ms. Monte will administer the
14 oath.

15 COURT REPORTER: Do you solemnly swear
16 or affirm to tell the truth, the whole truth, and
17 nothing but the truth, so help you God?

18 MR. MCCARGO: I do.

19 COURT REPORTER: Thank you.

20 COUNCIL PRESIDENT COCKREL: The format
21 we will follow for today's hearing will be identical
22 to what was done on Monday, meaning that Mr. Goodman,
23 our special counsel, will begin with an initial line
24 of questioning. Once that's been completed, Council
25 members will be able to ask their questions in the

1 order in which they let me know that they wanted to
2 be on the list to ask questions.

3 So Mr. Goodman, the floor is yours.

4 MR. GOODMAN: Thank you very much, Mr.
5 President. Good morning, Mr. McCargo and Mr.
6 Bedrosian.

7 MR. MCCARGO: Good morning.

8 MR. GOODMAN: Before we start with the
9 questioning, Mr. President, the witness has asked if
10 he could read a formal statement that he has
11 prepared. I have distributed copies to all members
12 of Council before the opening of the proceeding in
13 advance, and I have given the reporter, Ms. Monte, a
14 copy of it, and I'd ask that it be entered into the
15 record. There have been a few slight grammatical
16 changes which I am told Mr. McCargo has made in the
17 text, but the best remains basically the same was
18 that which everyone has before them, and with that, I
19 would ask permission to allow Mr. McCargo to read the
20 statement, and then proceed with the questioning.

21 COUNCIL PRESIDENT COCKREL: Before you
22 do that, Mr. Goodman, I was not here when that was
23 passed out earlier. Do you have any extra copies?

24 MR. GOODMAN: I do, indeed.

25 MS. LEAVEY: Mr. Chair, prior to the

1 meeting, if I could again provide a general warning
2 to the witnesses that they do have the right to
3 counsel to represent them. They do have the right to
4 remain silent, and they need to be aware that this is
5 being recorded and transcribed, and will be made
6 available to whomever requests it in the legal
7 process. So, I need to make sure that this is on the
8 record. Thank you.

9 COUNCIL PRESIDENT COCKREL: And once
10 again, for the -- for the record, Mr. McCargo is here
11 with his attorney. All right. Mr. McCargo, you can
12 proceed.

13 THE WITNESS: Thank you, sir. Let me
14 first apologize for reading this statement.

15 (Inaudible)

16 As I was indicating, I will be reading
17 this statement. Normally, I would do it
18 contemporaneously, but due to the nature of the
19 proceedings, I thought it would be best if I put my
20 statement in writing, and made sure I adhered to the
21 text.

22 COUNCIL PRESIDENT COCKREL: Mr.
23 McCargo --

24 THE WITNESS: Yes.

25 COUNCIL PRESIDENT COCKREL: -- if you

1 -- the mic is on, but we're having a little trouble
2 hearing you, so --

3 MR. MCCARGO: I'll move a little
4 closer; is that better?

5 COUNCIL PRESIDENT COCKREL: Much
6 better, much better.

7 MR. MCCARGO: Good morning, Council
8 members. I'm Samuel E. McCargo. I'm a member of
9 State Bar of Michigan, and I was admitted to practice
10 in the State of Michigan on October 14, 1975. I
11 obtained my BA from the University of Michigan in
12 1972; and my JD in 1975. I am currently associated
13 with Lewis & Munday in an of counsel relationship,
14 and I chair the firm's Litigation Group.

15 I am honored to appear before the
16 Council, and I hope that I will be able to assist the
17 Council by providing meaningful and complete
18 information regarding the settlement of the Brown and
19 Harris cases. I can assure Council that exclusive of
20 any attorney/client privileged matters, I will
21 endeavor to answer any and all of Council's questions
22 accurately and fully. If there are any matters that
23 I can't answer because I do not have the information
24 requested, I will be happy to try to secure the
25 information and submit it at a later time. In the

1 event that Council deems it necessary to invite me
2 back for further questioning, I will be happy to
3 accommodate your requests.

4 Now turning briefly to the subject
5 matter of my appearance here today, I would like to
6 share some preliminary information regarding my
7 representation of the Mayor and the settlement of the
8 Brown and Harris cases.

9 The only Defendant I represented as an
10 attorney in the Brown case was Mayor Kwame
11 Kilpatrick. I began legal representation of Mayor
12 Kwame Kilpatrick in the Brown case on or about June
13 2, 2004. I was retained to represent Mayor Kwame
14 Kilpatrick by the City of Detroit Law Department, and
15 obtained a written retainer agreement for the
16 representation of Mayor Kwame Kilpatrick in the Brown
17 case. Throughout my representation, I had no final
18 settlement authority. I only had authority to
19 recommend settlement to my client, Mayor Kwame
20 Kilpatrick.

21 I participated in a court ordered
22 facilitation on October 17, 2007 at the Law Offices
23 of Charfoos & Christensen on Woodward Avenue, in the
24 City of Detroit. Plaintiffs' and Defendants'
25 attorneys were in separate rooms for most of the

1 facilitation session.

2 The facilitator, Val Washington,
3 shuttled between the rooms solely exchanging
4 proposals on Plaintiffs' fees during the first few
5 hours. Plaintiff requested, through the facilitator
6 that the facilitation be expanded in scope to cover a
7 full and complete settlement of the Brown case. The
8 Defendants' attorney sent a reply through the
9 facilitator that the attorneys had no authority to
10 expand the scope of negotiations and that their
11 analysis of potential appeal rights had not been
12 completed.

13 The facilitator asked the Defendants
14 to explore the possibility of expanding the scope of
15 negotiations among themselves; the Defendants'
16 attorneys began these discussions as requested. The
17 defense attorneys reached a consensus that expanding
18 the scope of negotiations was a reasonable request,
19 and that it might be possible to get authority to do
20 so.

21 Before defense attorneys could explore
22 a potential expanded scope of negotiations with all
23 their clients, Plaintiffs' attorney sent a
24 confidential package to me through the facilitator.
25 I was told that the package was being delivered to me

1 alone at the direction of the Plaintiff's attorney.

2 In the package delivered to me was a
3 motion allegedly prepared by Plaintiffs' attorney,
4 Michael Stefani, which contained allegations
5 regarding one or more text messages. The motion
6 contained potentially embarrassing terminology of a
7 sexual nature, and statements containing the terms
8 firing, removal, and demotion of Gary Brown. The
9 portion of the motion I examined contained what
10 appeared to be selective truncated excerpts from a
11 larger source document. It contained no unique
12 identifiers, electronic or otherwise.

13 I did not see original text messages
14 or the source documents from which the selective
15 truncated excerpts were taken. On October 17, 2007,
16 during and after my initial review of the Plaintiffs'
17 motion, I did not conclude that it conclusively
18 proved the claims being asserted in the motion. I
19 then spoke with Mr. Stefani, during which time I told
20 him that I had no prior knowledge of any of the
21 matters associated with the motion.

22 I informed the other defense attorneys
23 that Plaintiffs' attorney alleged that he had
24 obtained the SkyTel records that had been subject of
25 an in camera only production order issued by the

1 court on August 26, 2004. The order had been issued
2 to protect against improper disclosure of
3 governmentally privileged materials.

4 After the defense counsel had
5 conferred with their clients by phone, and after the
6 City attorneys were joined by John Johnson, City of
7 Detroit Corporation Counsel, the parties negotiated
8 settlement figures for the Brown, Nelthrope, and
9 Harris cases. The same shuttle negotiation format
10 was used for the negotiation of the settlement
11 figures as was employed for the negotiations on Mr.
12 Stefani's attorney fees and costs.

13 During facilitation negotiations, I
14 represented my client, Mayor Kwame Kilpatrick only.
15 All attorneys left the facilitation location in
16 Detroit at approximately 5:00 p.m., and agreed to
17 meet at Plaintiffs' counsel's office in Royal Oak.

18 The attorneys for the parties met at
19 Mr. Stefani's office at approximately 6:45 p.m.
20 During that meeting, the attorneys representing the
21 parties signed a written proposal for settlement with
22 an opt-in provision. I did not consider the document
23 a final binding settlement agreement. By its terms,
24 it would only become effective if all the parties
25 complied with the opt-in provision in writing within

1 specific time periods. The opt-in provision allowed
2 each party an opportunity and time to raise
3 additional issues, accept or reject, modify the
4 proposed terms, or request further facilitation.

5 Plaintiffs' attorney announced that
6 neither the originals nor copies of the SkyTel text
7 pager messages would be provided to the Defendants
8 until after closing the Brown and Harris cases. So
9 the attorneys for the parties negotiated an escrow
10 arrangement for documents that were in the sole
11 possession of the Plaintiffs' attorney. I was
12 convinced that these records contained sensitive
13 matters covered by the governmental deliberative
14 process privilege. I suspected that the records also
15 contained embarrassing personal information, but
16 Plaintiffs' attorney refused to surrender the alleged
17 corroborating evidence.

18 I also concluded that I would have to
19 withdraw from representation of my client in these
20 SkyTel matters because my ability to effectively
21 represent him had been compromised.

22 I met with my client and his new
23 attorney, separately, on October 19, 2007, and
24 started the process of transitioning the
25 representation. I completed the work on Brown &

1 Harris because it was impracticable and unworkable at
2 that time to interject a new attorney into the
3 negotiations to close out those cases.

4 On or about October 26, 2007, I began
5 negotiations for final settlement documents on my
6 client's behalf with the attorneys for the City and
7 Plaintiffs' counsel. At that time, it was my
8 assessment that an extensive legal investigation of
9 SkyTel and Plaintiffs' allegations was likely, and
10 that litigation against SkyTel and numerous other
11 parties could result. I had determined that I could
12 not and should not be involved in any of these
13 specific activities, but that I had a legal duty to
14 protect and preserve the legal rights of my client
15 and the existing documents.

16 On or about October 27, 2007, Kwame
17 Kilpatrick rejected the proposed October 17, 2007
18 opt-in settlement agreement, and signed a Notice of
19 Rejection dated October 27, 2007. I drafted the
20 Notice of Rejection on or before October 27, 2007.

21 Since the proposed opt-in settlement
22 agreement had been rejected, new documents were
23 drafted to resolve issues related to the private
24 rights of the individuals, including Ms. Beatty's
25 rights regarding a possible cause of actions against

1 Plaintiffs and their attorneys. In addition, all
2 attorneys agreed that it would be inappropriate to
3 include resolution of those issues in the Brown and
4 Harris settlement agreements. Four documents
5 resulted from these discussions: The first, the
6 Brown Settlement Agreement. Second, the Harris
7 Settlement Agreement. Third, an Allocation Letter
8 Agreement, and fourth, Personal and Private
9 Confidentiality Agreement involving the exchange of
10 documents. Because I was still counsel for Kwame
11 Kilpatrick, I participated in discussions,
12 negotiations, and exchanges of documents between all
13 counsel during October 26, 2007 and November 1, 2007.

14 With that, Mr. Goodman, I'm prepared
15 to receive your questions.

16 SAMUEL MCCARGO

17 DULY SWORN, CALLED AS A WITNESS, TESTIFIED AS FOLLOWS:

18 EXAMINATION

19 BY MR. GOODMAN:

20 Q Thank you very much, Mr. McCargo, and I want to start
21 by thanking you for appearing here today. You and I
22 have spoken privately before and you've allowed me to
23 take notes during those discussions about these
24 matters; is that correct, sir?

25 A That is correct.

1 Q And you understand that as we were called -- advised
2 by Ms. Leavey before we started with your statement
3 that you would have perhaps a sound basis for not
4 having to appear today. So your appearance here
5 today is voluntary; is that correct?

6 A That is correct.

7 Q And you've been subpoenaed as well?

8 A That is correct.

9 Q All right. Now, with that in mind, I have some
10 questions about the formal written statement that
11 you've submitted, so perhaps we can start there.

12 A Yes.

13 Q Turn to page three, at the top. You indicated that
14 the Plaintiff -- it actually starts at the bottom of
15 page two. The Plaintiff requested through the
16 facilitator that the facilitation be expanded in
17 scope to cover a full and complete settlement of the
18 Brown case.

19 A That's correct.

20 Q Now, by Brown you mean Brown and you refer throughout
21 this written statement to the Brown case, and
22 whenever you do refer to the Brown case you mean
23 Brown and Nelthrope, correct?

24 A Yes.

25 Q And I take it that since you only mention the Brown

1 case on page three of the statement, there was no
2 discussion, at least at that point, in settling the
3 Harris case; is that correct?

4 A The facilitator did not specifically identify which
5 case or cases. He never mentioned Harris. When
6 asked about an expanded scope of discussion, it was
7 my assumption with everything that I knew at that
8 time that we were talking about the Brown case.

9 Q And presumably, that would have been an assumption of
10 the other co-defense lawyers?

11 A I can't speak for them, but I wouldn't debate that.

12 Q All right. But even leaving Harris aside, it's your
13 testimony that when the subject of expanding the
14 discussion or expanding negotiations, as you referred
15 to, of the Brown and Nelthrope cases was raised, you
16 and your colleagues were open to that discussion; is
17 that right?

18 A When the subject was first raised, we indicated we
19 had no authority to do that. I did not have enough
20 knowledge about the history of how the City had
21 handled requests of this nature, so I was unable to
22 address the issue of whether this is something that
23 had been done in the past, or whether it was
24 acceptable. So to the extent that that information
25 was not available to me when the facilitator first

1 spoke, I did not have that knowledge. Later I
2 learned after he left our presence more about this
3 expanding --

4 Q And what did you learn?

5 A I learned that it had been done before.

6 Q It had been done before in other cases?

7 A That is correct.

8 Q And you were told that by Ms. Osmauede --

9 A That is correct.

10 Q And so, given that -- withdraw that. You then
11 stated, I believe, that you talked amongst yourselves
12 and decided it would be a good idea, or at least a --
13 a plausible idea, to expand the negotiations to cover
14 the whole case -- all of the case, not only the
15 attorney's fees, but the settlement of everybody; is
16 that right?

17 A Before those discussions took place, the facilitator
18 encouraged us to engage in those discussions. It was
19 the implication of the facilitator that we should try
20 to get that authority if we didn't have it, and so
21 yes, we engaged in those discussions and the lawyers
22 concluded that it made sense to talk about the
23 settlement terms.

24 Q And you were all, I take it, interested in doing so;
25 is that correct?

1 A Yes.

2 Q Now, would you just give the members of Council -- I
3 made the mistake yesterday several times of referring
4 to them as members of the jury. Old habits die hard,
5 I guess. But would you tell the members of Council
6 why, at least from your perspective, it was a good
7 idea to stand in negotiations and settle the whole
8 case?

9 A We had no idea of what Mr. Stefani's bottom line
10 would be for the case. I had not had any discussions
11 with Mr. Stefani previously that were meaningful
12 discussions for settlement. We now had a
13 facilitator, an experienced facilitator, Mr. Val
14 Washington, former Judge, and I cannot speak with
15 your lawyers, so having him there was a very valuable
16 tool in trying to ascertain what the real settlement
17 potential was between the Plaintiffs, even if we
18 never reached an agreement.

19 Q Did you believe that what the position was in regard
20 to ultimate success on appeal was weak at that point?

21 A In my opinion, our success on appeal had been reduced
22 by at least 60 to 70 percent from what I thought it
23 might have been a month ago, and that was because, in
24 my own personal opinion, a stronger case for an
25 appeal would have been juror misconduct. I did not

1 have a lot of faith in appealing on evidentiary
2 issues. And we had investigated three different
3 potential acts of jury misconduct during that period
4 of time, and I was not able to confirm that there was
5 juror misconduct. The law of juror misconduct as a
6 potential basis of appeal, I thought that our
7 likelihood of success had been significantly reduced.

8 Q Now, Mr. McCargo, I have provided you with a copy of
9 what had been the minutes of the closed meeting that
10 had occurred in front of this body on December 19th,
11 2007; did I not?

12 A Yes, you did.

13 Q And members, I believe, have all had that made
14 available for them so they've had a chance to review
15 it as well. During that session, was the possibility
16 or likelihood of success on appeal discussed; do you
17 recall that?

18 A I recall Mr. Johnson discussing that mistakes had
19 been made.

20 Q Did you comment on it as well?

21 A I commented on three matters, as I recall. One --
22 one was in terms of attorney fees, costs, and other
23 post-trial expenses. And the other issue was a more
24 global question about the jury pool in Wayne County,
25 and my comments about that were more futuristic than

1 tied specifically to the appeal of this case.

2 Q But during a closed session, which was closed
3 specifically to discuss the appeal and settlement of
4 this case, you referred to that issue of the jury
5 composition and Wayne County juries as being -- I
6 believe that the term you used was, quote, "Very,
7 very hot," unquote, possibility; is that right?

8 A Yes. The question was posed to me by -- I believe it
9 was Council Member Watson, and I responded to the
10 question, after being given permission, essentially,
11 by Mr. Johnson. When we went into the meeting, we
12 had a pre-meeting to determine how best to handle
13 that meeting in an orderly fashion, and I attempted
14 to comply with our plan for orderly presentation of
15 information.

16 Q And Mr. Johnson would lead the discussion with
17 Council on September the 19th; am I right?

18 A That is correct.

19 Q And you heard Mr. Johnson also say, I take it, that
20 there would be -- at least he thought that there was a
21 possibility of solid issues that would result in an
22 entirely different outcome on appeal; do you recall
23 that?

24 A On the 17th or 19th of September, I recall him
25 indicating something about that, yes.

1 Q And you also recall him saying toward the end of that
2 session that he would stay in post-contact with
3 Council throughout the process and advise them if
4 there were any changes; do you recall that?

5 A I don't recall that specifically. But I can tell you
6 the implication or the general gist of the
7 information he was providing was that this was not
8 the last time that Council was going to get
9 information on this case, and that he would, in fact,
10 be leading the charge (inaudible).

11 Q Just for purposes of record and members of Council,
12 pages 42 or 43 of the transcript on that point. Now,
13 going back to your formal statement, Mr. McCargo, it
14 was after you concluded amongst yourself or reached a
15 consensus that it would, perhaps, be productive to
16 open the discussions up in standing negotiations that
17 a letter was -- or an envelope was handed to you; is
18 that correct?

19 A Yes. The lawyers had come to the consensus that we
20 should address our clients to see if we could get
21 authority to do that. Before that could happen, I
22 was pulled out of the meeting by the facilitator.

23 Q The lawyers, meaning the lawyers on -- the lawyers on
24 your side of the table, right?

25 A That's correct.

1 Q And so, there was some discussion that it would be a
2 good idea to get in touch with your various clients;
3 is that correct?
4 A That's correct.
5 Q And I take it within the context of this case, that
6 meant Mr. Johnson, Ms. Colbert, and Mr. -- Mr.
7 Wilson's clients, and in your case, the Mayor is your
8 client; is that correct?
9 A That is correct.
10 Q And what was your intention to tell your client?
11 A If the City obtained approval to go forward, then I
12 was going to call my client. I had no intent of
13 calling my client if the City was not prepared to go
14 forward, because the City controlled the matter.
15 Q Okay. Beyond what was handed to you, did you show it
16 to anyone else?
17 A No.
18 Q How long of a document was it; if you can recall?
19 A I don't recall how long it was because I never got
20 the opportunity to go through the entire document.
21 It was a motion of some sort, and it appeared to be
22 supplemented by a brief.
23 Q How much -- how much of the contents of that document
24 did you read?
25 A The first few pages.

1 Q Meaning two, three, four, or something like that?

2 A Maybe about four pages or five pages.

3 Q And do you recall you referred in your -- again, in
4 your written statement, that the document contained
5 selective truncated excerpts of a larger source
6 document; is that correct?

7 A That is correct.

8 Q Do you mean to say that these excerpts were
9 misleading or excerpted in a way that was out of
10 context from the original?

11 A I could -- I could not tell. I could not tell if
12 they were taken out of context. I could not tell if
13 they were selected pieces to create sort of a
14 heightened sense of, I guess, shock, but it appeared
15 to me that they were very selectively pulled. There
16 was some language that was bolded above others, and
17 it was clear that they were not given to me so that I
18 could see the context in which they were provided. I
19 couldn't tell what was said before, and I couldn't
20 tell what was said after. I couldn't tell if there
21 were other entries between the various quotes. There
22 were quotes in this motion that were being provided
23 to me. So I didn't have the original documents. I
24 had Mr. Stefani's motion and the way it was presented
25 to me did not allow me to analyze or determine the

1 context of it.

2 Q And you commented in your formal statement, again --
3 at least you've broken down the comments into two
4 parts. One was there were statements containing the
5 term firing, removal, and demotion of Gary Brown; is
6 that right, sir?

7 A That's correct.

8 Q And in that sense, did you consider these to
9 establish either -- put it this way, did you believe
10 these to establish conclusively that either the Mayor
11 or Ms. Beatty had testified falsely during the trial,
12 simply because the words firing, removal, or demotion
13 was there?

14 A I did not consider that to be the case at that time.
15 I looked at those documents, and to be quite honest
16 about the terms firing, removal, and demotion, it had
17 become less of an issue in the case because at the
18 time of trial, the defense that was offered was the
19 defense that he said he did not know whether the term
20 that had been used was firing, removal, or demotion.
21 The defense was the Mayor didn't have the authority
22 to fire anyone, and so by that time, the semantics
23 for firing, removal, or demotion had become a very
24 insignificant issue based on the way the case had
25 been tried and the defense had been offered.

1 Q So this was not important to you?

2 A At the time of trial it was unimportant to me, but it

3 was consistent with Mr. Stefani's repeated

4 allegations about this from the moment that I came

5 into the case. This was nothing different from what

6 he had been saying in June of '04 when I came into

7 the case.

8 Q Not only that, you never really disagreed with the

9 contention of Mr. Stefani that the reason for the

10 firing was the investigation that had been undertaken

11 by Chief Brown; is that right?

12 A I'm not sure I understand the question.

13 Q What I'm saying is there were some -- there were some

14 -- as I understand the trial -- I was not there and I

15 defer to you on this point -- but it was my

16 understanding that Mr. Stefani and his client alleged

17 that the reason his client was fired is because he

18 had essentially participated in the blowing of the

19 whistle by an agent in this investigation, and that

20 the defense was well yes, he shouldn't have engaged

21 in the investigation because it had to be taken up

22 through channels, through the chief, and Chief

23 Oliver, and it had been undertaken improperly; is

24 that about right?

25 A It certainly was a part of our defense.

1 Q And the initiation, I guess, approached that the
2 Mayor and the Chief took to Deputy Chief Brown was an
3 anonymous letter, a letter to be received by Ms.
4 Beatty that was slipped under her door or over the
5 tracks, or something like that; is that right?

6 A That was one of the documents.

7 Q And Mr. Stefani testified here on Monday that what
8 these text messages really showed is that there was
9 discussion between Ms. Beatty and the Mayor about
10 firing Deputy Chief Brown before she ever saw this
11 anonymous letter; were you aware of that when you saw
12 this document?

13 A Mr. Stefani argued that in 2004. That's what I mean
14 by there was nothing new in this document that I saw.
15 I didn't pay a lot of attention to it.

16 Q What I'm saying is were you aware of the chronology,
17 and that is that the text messages showed internal
18 discussions between the Mayor and his Chief of Staff
19 about firing Chief Brown before she allegedly
20 received this anonymous letter?

21 A Your question is did I study those to determine that
22 chronology?

23 Q That's right.

24 A The answer is no.

25 Q Okay. In addition, he indicated that the text

1 messages showed that the source of the leak. Officer
2 Nelthrope is named to the press and to the public
3 with regard to the fact that he was an investigator
4 of some of these allegations, came through the Mayor
5 and his staff.

6 A If that was in the package, I never got to that in
7 the package, the motion that he provided to the
8 facilitator.

9 Q And finally, it was alleged or Ms. Stefani testified
10 that some of the texts referred to conclusively
11 established the existence of a romantic or sexual
12 relationship between these two individuals. Did you
13 read those excerpts? And I will understand if these
14 weren't circled. Go ahead.

15 A As I indicated earlier, the text excerpts that I saw
16 had comments of a sexual nature. It was clear to me
17 that they were sexual in nature. I did not conclude,
18 based on what I saw, however, that those comments
19 established a historical, sexual, intimate
20 relationship. And certainly not at that time, and by
21 the time the evening was over, my concern about the
22 veracity of those allegations was even more elevated.

23 Q Do you want to expand on that and tell me why you say
24 that?

25 A Throughout the day, I continued to get bits and

1 pieces of information about the motion, about the
2 text messages, and about how it had come into the
3 hands of Mr. Stefani. I never got all the
4 information at one time. It troubled me when I
5 continued to get little bits and pieces throughout
6 the day. I didn't find out about the subpoena until
7 that evening in his office. I didn't find out that
8 it had been sent and there had been a report sent
9 directly to Mr. Stefani's office. I didn't find out
10 until that evening that SkyTel had delivered it
11 directly to Mr. Stefani and there had been no notice
12 given to the Defendant. It was all that I was
13 getting, bits and pieces of information and it raised
14 significant questions about this document Mr. Stefani
15 had that he would not produce to us, and would not
16 release so that it could either deny or support the
17 allegations.

18 Q Did you ever say, "Look, Stefani, I want to see the
19 text messages before I -- before I buy into any of
20 what you're saying. Will you show them to me?"

21 A I never got a chance to say that directly because he
22 did not want to produce it. If he was not going to
23 produce them, then of course what will you do with
24 them? Because we need to have these secured some
25 way, so that they can be examined by somebody at some

1 point in time in the future.

2 Q We're all lawyers here, at least the four of us
3 standing close to one another, and if somebody had
4 said to me, "I'm not going to do it," my reaction
5 would actually be, "Well, forget it. I'm not going
6 to talk anymore. I want to see them." Was there
7 anything like that that went on?

8 A During the evening we pressed Mr. Stefani for access
9 to or copies, or a set of the records. They were
10 allegedly on a disk and Mr. Stefani pointed to a safe
11 in his office and he said, "I have these in the safe,
12 and I'm not going to give them to you until these
13 settlements are okayed." He said, "I have another
14 set in a safe at my home, and I'm not going to
15 produce those until you settle this whole case."
16 That was Mr. Stefani's position until the question
17 was whether we were going to take the risk that what
18 he claimed he had, he in fact had. Whether we were
19 going to take the risk and Mr. Stefani was going to
20 do with what he had done with all such documents in
21 the past, and that is to go straight to the press and
22 have them published.

23 Q So regardless of your skepticism, you took the risk;
24 is that right?

25 A No. The risk -- the risk that had been -- the risk

1 that had been to reject -- to essentially reject the
2 settlement and get up and walk out of there and tell
3 him to do what he wanted to do; that was the risk.

4 Q Regardless of your skepticism, you decided not to
5 settle?

6 A That's correct.

7 Q Now -- and then you went on to negotiate the
8 settlement in all three cases; is that right? A
9 monetary settlement for all three cases?

10 A We negotiated a monetary settlement after the
11 facilitation at Charfoos's office. We then went back
12 to Mr. Stefani's office to negotiate the language of
13 it that ultimately ended up in the proposed
14 documents.

15 Q And by language you're talking about the
16 confidentiality provisions; am I right about that?

17 A That is one of them. There was a whole series. It
18 may have been eight or nine different paragraphs --

19 Q Yes.

20 A -- in that document, including confidentiality.
21 There was language in there about Christine Beatty's
22 right to a lawsuit. There was language in there
23 about Mr. Stefani's computer system. So there was a
24 series of about eight or nine paragraphs.

25 Q And computer systems are supposed to be scrubbed and

1 the brief, which has the language about the text
2 messages, as well as any other reference to the text
3 messages; is that right?

4 A Mr. Stefani indicated that he was going to, and that
5 he had already scrubbed his system of that. We never
6 asked for that. We never requested his system, nor
7 did we request destruction of any records at all.

8 COUNCIL PRESIDENT PRO TEM CONYERS:

9 Can you have him repeat that, please?

10 BY MR. GOODMAN:

11 Q Could you repeat that?

12 A We never requested any scrubbing of Mr. Stefani's
13 system. He volunteered that and did it on his own.
14 He put that language in the agreement himself. We
15 never even discussed that until we showed up at his
16 office and he had inserted that language in the
17 document.

18 Q Did you object to that language?

19 A I didn't object to that language referring to his
20 system, and he had already -- he had already scrubbed
21 it or he was going to scrub it. Keep in mind that I
22 had a copy of allegedly what was on his system, so
23 whatever he scrubbed, I already had a copy of.

24 Q From the disk you actually had a copy?

25 A Yes, I had a copy of it.

1 Q In addition, I'm going to go to page six in your
2 statement, Mr. McCargo, and you said you were
3 convinced -- excuse me.

4 COUNCIL MEMBER COCKREL: For clarity,
5 you had a copy or didn't have a copy?

6 COUNCIL PRESIDENT COCKREL: Come to
7 the chair, please. There is an issue about -- I
8 think the real question is Mr. McCargo stated he
9 already had a copy?

10 THE WITNESS: I had a copy of Mr.
11 Stefani's motion.

12 COUNCIL PRESIDENT COCKREL: You had a
13 copy of his motion?

14 COUNCIL MEMBER COCKREL: That's what
15 he had on his computer?

16 THE WITNESS: And that's what he had
17 on his computer, his motion. The motion was on the
18 computer. He had the text messages on a CD in his
19 safe.

20 COUNCIL PRESIDENT PRO TEM CONYERS:
21 Okay.

22 MR. GOODMAN: On that exchange, I
23 didn't sense unease on the part of members of
24 Council, so if that happens again, because I'm
25 looking in the opposite direction, I'd appreciate you

1 state the need for clarity.

2 BY MR. GOODMAN:

3 Q You said that the one he had on his computer, his
4 hard drive, was the -- was the motion which he had
5 given you; is that right?

6 A That's what he told us. Of course, I did not know.
7 I could only accept his representation.

8 Q Now, you also said that he had a disk that contained
9 the actual text messages themselves?

10 A In a safe.

11 Q Did you talk to him about whether that disk had been
12 copied or had been reproduced, or had been inserted
13 at any point in time on his hard drive itself?

14 A No. I asked him if he had any other copies of it. I
15 did not specifically ask about the hard drive. And
16 he did have another set at his home in another safe.

17 Q Do you have another one of these? Mr. McCargo, I'm
18 handing you --

19 COUNCIL PRESIDENT COCKREL: Mr.

20 Goodman, the President Pro Tem needs clarification.

21 COUNCIL PRESIDENT PRO TEM CONYERS: I
22 would like to ask our court reporter -- I would like
23 to -- maybe not today, but tomorrow, if we could go
24 back and look at Mr. Stefani's testimony, because I
25 thought he said he had one disk and two hard copies

1 on paper. But some of us think he said he had two
2 disks and some papers, so I would like to know
3 exactly what he said because I wrote my notes and I
4 thought he said one disk and two hard copies on
5 paper. So if you could check that for me, please?
6 Thank you.

7 COUNCIL PRESIDENT COCKREL: Continue,
8 Mr. Goodman.

9 MR. GOODMAN: President Pro Tem, I
10 have careful notes of that, which I can check later
11 also and turn in before the end of the day.

12 COUNCIL PRESIDENT PRO TEM CONYERS:
13 Thank you.

14 MR. GOODMAN: You're welcome.

15 BY MR. GOODMAN:

16 Q Turning to tab three, Mr. McCargo, this is the
17 document that you went back to Mr. Stefani's office
18 to have prepared; is that correct?

19 A Correct.

20 Q And that you signed; is that right?

21 A Correct.

22 Q Now, was the Mayor aware of the existence of the
23 alleged or purported text messages?

24 A As I indicated, there are matters that I cannot
25 discuss, Mr. Goodman, and that would fall into one of

1 those.

2 Q I understand. I'll defer to that and in case, feel

3 free to approach the issue and insert that.

4 COUNCIL MEMBER COCKREL: Can you

5 repeat the question again, and the answer?

6 COUNCIL PRESIDENT COCKREL: Council

7 member --

8 COUNCIL MEMBER COCKREL: Well, I was

9 trying to get your attention.

10 COUNCIL PRESIDENT COCKREL: What's the

11 question?

12 MR. GOODMAN: The question was whether

13 or not the Mayor was aware of the Stefani's alleged

14 and purported text messages. I believe that Mr.

15 McCargo said that he could not answer that because it

16 is covered by attorney/client privilege.

17 THE WITNESS: I did.

18 COUNCIL MEMBER COCKREL: Thank you.

19 BY MR. GOODMAN:

20 Q The same question, and I assume I'll get the same

21 answer, but was the Mayor aware of the negotiations

22 for the Confidentiality Agreement, the terms of which

23 appear in this document that is before you.

24 A My answer is the same.

25 Q All right. My question then -- my follow-up to that

1 would be did you agree to the confidentiality
2 provisions that are incorporated in this document?
3 A I signed -- the copy that I signed?
4 Q Yes.
5 A I agreed to this document with the provisions in
6 here, Mr. Goodman, with the proviso that this was not
7 binding, and that I would have an opportunity to
8 reject this, or in other words I would have to -- opt
9 into it (inaudible). So the language here agreed to
10 as the set of components for a proposed settlement
11 agreement. I did not disagree with that set of
12 proposed settlement agreements, and I did not submit
13 to them, and I reserved the right to opt out and
14 reject this.
15 Q Did you, as the Mayor's attorney, insist that there
16 be confidentiality provisions with regard to the
17 Kilpatrick/Beatty text messages?
18 A During the negotiations, I agreed with the inclusion
19 of the confidentiality agreement. I did not draft
20 it. I agreed with it. I felt it was an appropriate
21 provision. It was in the document that Mr. Stefani
22 had prepared. This was not put in the document after
23 I met with Mr. Stefani. This was already in the
24 document when I met with Mr. Stefani. He put the
25 confidentiality language in there. And so I didn't

1 put it in there, but I concurred with him. It was
2 not me twisting his arm for the confidentiality
3 provisions.

4 Q Would you have agreed to settlement of this case
5 without confidentiality -- without these
6 confidentiality provisions?

7 A I did not believe that I could have properly
8 represented my client and protected his rights if I
9 did not have at least a confidentiality provision
10 that held -- that held anything that was going on at
11 that hearing until such time that my client and his
12 attorneys reviewed the actual document. I would not
13 have agreed to anything that did not include a
14 confidentiality agreement if it did not protect what
15 I concluded to be agreed to by my client.

16 Q Thank you.

17 MR. GOODMAN: Mr. McCargo, with
18 permission, if I may take my jacket off. Mr. McCargo
19 and Mr. Bedrosian, I don't expect either of you to
20 take me up on the offer, but you're welcome to --

21 THE WITNESS: Just a point of
22 clarification. I want to make sure that it's clear
23 that my authority did not extend to the right to
24 reach an agreement for my client. I had no authority
25 to commit to an agreement for my client. Any

1 agreement that I entered into was limited to make
2 recommendations, and so I don't want to leave here
3 with Council thinking that I had the authority to
4 settle this case or agree to something on my client's
5 behalf. And if you look at this document, you'll see
6 the language indicates that I agree to recommend to
7 my client.

8 MR. GOODMAN: I understand that. I
9 also understand that --

10 BY MR. GOODMAN:

11 Q I guess I should ask you this. Sir, you understood
12 as well, that after these negotiations were
13 concluded, Mr. Johnson actually called Council Member
14 Kenyatta and asked to appear in front of the Internal
15 Operations Committee of this body the very next
16 morning to present the settlement to Council and
17 Committee at that point?

18 A I did not know who was going to contact Council or
19 how Council was going to be contacted, but I knew for
20 certain at that point that they would be contacted and I
21 knew for certain that there were going to be some
22 concessions between City Council and its attorneys.

23 Q And that those would occur immediately?

24 A I knew they were going to occur as soon as possible,
25 sir.

1 Q Okay. The Settlement Agreement that is in this book
2 under tab three, was it in handwritten form before
3 that time?

4 A When we left the facilitation on Woodward Avenue, Mr.
5 Stefani either said through the facilitator or
6 directly as we were leaving that he had been drafting
7 something in handwritten form that he was going to
8 present to us that he felt represented matters that
9 should be included in this agreement. I never saw
10 him drafting this document, but he represented that
11 he was doing so, and so it was my expectation that we
12 would see and we would talk about what he had been
13 drafting in his own room out of our sight.

14 Q Did you see it?

15 A I do recall seeing it. I believe that I saw it on
16 two occasions; once when he was in the meeting and he
17 said he had drafted something, and we didn't have
18 time to look at it. He sort of waved it at me and
19 said I'm going to go to my office and get this typed
20 up. And then I believe I saw it again at his office
21 that evening.

22 Q Take a look at that. I'm -- and I -- I greatly
23 apologize for not having given this to you in
24 advance, but we just got it two days ago and I've
25 been on the run, so to speak.

1 A There are three pages here. There is a title page;
2 there's some handwritten notes about McCargo,
3 Copeland, and Turner; and there is a document that
4 says the proposal for global S. These documents I
5 never saw. There was a document beginning with the
6 title Settlement Agreement, which is, I believe, the
7 document that Mr. Stefani was referencing as we were
8 leaving the facilitation.

9 Q Did you, after you read this handwritten document,
10 make any suggestions, corrections, or changes to it?

11 A I certainly did.

12 Q I want to call your attention to the last page of
13 this document, and I think it should be highlighted
14 on this; do you see it there?

15 A Yes.

16 Q And I'll read it. First I'll read it as it was, I
17 believe, originally written, or at least that was
18 prior testified. Quote, "As a condition to this
19 agreement becoming operative, it must be approved by
20 Mayor Kwame Kilpatrick and City Council of the City
21 of Detroit." Do you see that?

22 A I do.

23 Q And do you see that the word "it" is crossed out and
24 in caret above it is the phrase, quote, "the monetary
25 terms of this settlement," end quote.

1 A I see that.

2 Q Do you recall that change or alteration being made in
3 this document?

4 A I do not recall that specific change.

5 Q Do you remember it being discussed?

6 A I really don't recall that specific language being
7 discussed, but I do recall this paragraph being
8 discussed, maybe more than any other is concerned.

9 Q This is the so-called opt-in paragraph?

10 A That's correct.

11 Q Now, this paragraph, even as written and as changed
12 in the document before you, the handwritten document,
13 was changed at the time it was typed up as well; is
14 that right, sir? You can compare it to paragraph
15 eight and you'll see the changes there.

16 A Can you point me to the changes so that I can --

17 Q Well, for example -- this is one example, where it
18 says, "As a condition of this agreement becoming
19 operative, the monetary terms of this agreement must
20 be approved," and there is another group of people
21 added in, including Gary Brown, Harold Nelthrope,
22 Walter Harris.

23 A Yes. I recall discussions about that as well.

24 Q And that was changed when it was transferred from the
25 handwritten or hand-printed form to this typed page,

1 correct?

2 A Yes, it was.

3 Q Do you recall any discussion when Ms. -- excuse me --

4 when the original Settlement Agreement which, as you

5 pointed out, had opt-in provisions -- when this was

6 typed? That occurred on October 17th, 2007; is that

7 right?

8 A Yes. The actual mandate that there be an opt-in

9 provision was agreed to before we left Woodward

10 Avenue.

11 Q Before you left the Charfoos --

12 A Yes.

13 Q -- conference?

14 A Yes.

15 Q And when you got out of the Stefani office this was

16 all typed up, and it was that night though, the 17th

17 of October; am I right?

18 A It was -- the typing was completed that evening.

19 When we got to Mr. Stefani's office -- I'm not sure

20 whether it was completely typed when we got there or

21 whether it was still in typing, but Mr. Stefani's

22 office provided the copy to be signed.

23 Q Do you recall any discussion among the attorneys who

24 were present there about the process of this matter

25 being brought before City Council for settlement

1 purposes, in addition to what you've already said?

2 A I recall the alteration in the times in this document

3 resulted in more expanded times for Council's actions

4 were discussed, because there was a concern that a

5 shorter period of time might not be enough to allow

6 all of the procedure that was necessary to get this

7 before Council, and so Council could be accomplished

8 in the shorter periods of times. So that was one of

9 the main reasons for increasing the number of days

10 for the opt-in provision.

11 Q In addition, do you recall if there was any

12 discussion about whether the confidentiality

13 provisions of this agreement would, in fact, be

14 exposed to Council?

15 A No, there was no discussion about that at all.

16 Q It was not?

17 A No, not whatsoever. It was not whatsoever.

18 Q Going back, if I may, to your formal statement, which

19 I appreciate.

20 A Yes.

21 Q You indicate on page six, in the first full

22 paragraph, that you were convinced that these records

23 contained sensitive matters covered by the

24 governmental deliberative process provisions; is that

25 correct, sir?

1 A Yes, it is.

2 Q And first of all, so everyone knows that we're on the
3 same page, define what you're talking about here by
4 the governmental deliberative process.

5 A Well, you have two types of privileges that are
6 similar. One is the legislative process privilege.
7 That refers to bodies such as this, where the body is
8 in session, engaged in discussions in trying to get
9 to a decision usually involving policy making or even
10 regarding decisions that affect finances or the
11 operations of a public entity. The law carves out
12 the second privilege, which is called the
13 governmental deliberative privilege, because
14 executives engage in the same kind of discussions,
15 but they don't enjoy the same protection of the
16 legislative body. And so executives engaged in
17 discussions about policy making that are the part and
18 parcel of the decision-making process, they are
19 evaluated. The distinction that the court makes is
20 that if the discussions are factual, they are not --
21 they now fall within the governmental deliberative
22 privilege. That is, they are policy making,
23 evaluative, or otherwise, they are governmental
24 deliberative privilege.

25 Q I think that is a correct explanation and one that I

1 happen to agree with, by the way. Now, why were you
2 convinced that these messages contained matters what
3 were covered by this deliberative process privilege?

4 A For approximately three and a half years, we have
5 been conditioned that these SkyTel records contained
6 governmental deliberative privileged matters because
7 when it first came out I never had an opportunity to
8 review those records. The individuals I talked to
9 about those records have not seen them. No one from
10 the City Law Department has ever seen these text
11 messages. Our investigation then turned to how are
12 these pagers used, and in my investigation uniformly
13 throughout all of the discussions that I had, that
14 these pagers were used for governmental deliberative
15 processes. They were designed -- they were assigned
16 to these employees and representatives of the City to
17 communicate about governmental matters; collective
18 bargaining; security systems; attorney/client
19 privileged matters pending litigation. And so for
20 three and a half years it was my understanding, based
21 on my research, that this report was there and
22 nothing could happen in that three and a half years
23 to change what I learned in 2004.

24 Q I understand that you were convinced that these
25 messages may have contained sexual material, but

1 having not seen the messages, my question is why is
2 it that you were convinced that they definitely did
3 contain deliberative process privileged material?

4 A The reason I was convinced is because of the
5 overwhelming consistency of the representations I had
6 obtained back in 2004 from individuals who used these
7 pagers, and the value of what was in them. Quite
8 frankly, Judge Callahan asked me the same questions
9 when I agued the motion in front of him, and I told
10 him just as I told you, "I have never seen them,
11 Judge. I can't tell you from my own discussion
12 what's there. I can only tell you what I've learned
13 from my own investigations, and that's what my
14 investigation said to me."

15 Q All right. Leaving that aside for the moment, the
16 next sentence in this statement says you suspected,
17 and that's distinguished from the rest of it; is that
18 right?

19 A That's correct.

20 Q You suspected that the records also contained
21 embarrassing personal information; is that right?

22 A That's correct.

23 Q And by that you mean information that either
24 suggested or revealed a romantic and/or sexual
25 relationship between the two individuals who were

1 involved in this, Ms. Beatty and the Mayor; is that
2 right, sir?

3 A Not exactly. What I assumed was sexually suggestive
4 language, Mr. Goodman, and while I did not know what
5 else was in those messages, and while I certainly
6 could not conclude that even what I was seeing was
7 true. I had seen something. I had seen something
8 that Mr. Stefani claimed to be in those records and
9 as I looked it, it was embarrassing language, and I
10 did not have enough information as to the source to
11 conclude that by looking at it it established a
12 complete story. In other words, it's like someone is
13 telling you a story and they take two or three
14 paragraphs down here and two or three lines out
15 there, and with the lines missing, you don't have the
16 whole story, and that's the way I felt. I knew there
17 were bits and pieces of information there that was
18 embarrassing, but I didn't have the entire story to
19 be able to say yes, this establishes what Mr. Stefani
20 says it establishes.

21 Q You were aware that both Ms. Beatty and the Mayor had
22 testified under oath during the trial that there was
23 no sexual relationship and no romantic relationship
24 between the two of them; is that right?

25 A That's correct.

1 Q So in addition to this material possibly being
2 embarrassing to them, it could also have as well have
3 been dangerous in terms of potential criminal
4 liability; is that right, sir?

5 A There was the risk that Mr. Stefani's allegations
6 could prove to be true, and it was that risk that I
7 was duly bound to protect against because I have
8 responsibilities in the blind. I didn't have the
9 text messages, but Mr. Stefani said they were there,
10 and if they were there, then there is one course of
11 conduct that has to be taken. If they were not
12 there, another course of conduct. And so, the risk
13 was a legal risk that I had to take into account with
14 regard to any actions that I took.

15 Q Risk here is a somewhat technical term. These were -
16 - this was a danger to your client, right?

17 A The risk was a danger, yes.

18 Q Yes. And in the very next paragraph in your report
19 it says you also concluded that you would have to
20 withdraw from the representation of your client in
21 the SkyTel matters because of your -- because your
22 ability to effectively represent him had been
23 compromised.

24 A That's correct.

25 Q I personally need some explanation with regards to

1 that paragraph, which means to me that I want to
2 understand what you're saying here. Give us a little
3 more detail. Why had your ability to effectively
4 represent your client been compromised by this
5 situation?

6 A By the time the meeting was over on October the 17th,
7 all of the information that I had gathered that I
8 spoke about earlier in bits and pieces, suggested to
9 me that my representation of my client, based on this
10 governmental deliberative privilege, had been
11 complete and unadulterated. It had been totaled for
12 years, and everything I had said and done up until
13 that point regarding any issue about the SkyTel
14 records had been responded to on the basis of the
15 governmental deliberative privilege. I believe that
16 that was the only sensitive material in these text
17 messages, and the SkyTel text messages had been the
18 issue -- had been the subject of the issue in 2004.
19 Now I was being told by Mr. Stefani that there may be
20 some other material in here, embarrassing material,
21 the sexually suggestive language. What that meant to
22 me was that I could not go forward representing my
23 client, I thought effectively, when I might be in a
24 situation where I have to shift gears when I find out
25 that there was something different in this material

1 than what I had thought for years. I felt that that
2 compromised me. I also felt that Mr. Stefani was
3 manipulating the process and also manipulating me. I
4 didn't know what was in those records, but I felt
5 that he was trying to put me in a position where if I
6 remained in that case, I would be a liability to my
7 client. And because I reached those conclusions, I
8 decided it was best that I withdraw from
9 representation and that my client get a new attorney.

10 Q How could you have been a liability to your client?
11 Understanding that you've never seen the text
12 messages and you do not know what the content of the
13 text messages are.

14 A Correct.

15 Q How could you possibly become a liability to your
16 client, hypothetically?

17 A If I had been arguing to you for four years that the
18 only thing that's in those messages are governmental
19 deliberative privileged, and then all of the sudden I
20 come in front of you and argue today, "Hey, guess
21 what?" That is not fair. There is something else,
22 and I want you as a judge, or a jury, or some other
23 body to take, to give credence in this inquisition,
24 affecting my ability to do that effectively for my
25 client was now a real possibility.

1 Q I understand that, Mr. McCargo. What I wonder about
2 is this; you've already said that you told the judge
3 just as you've told us, that you've never seen those
4 messages and you didn't know what was in them, but
5 this was based upon your own investigation. Now,
6 assuming hypothetically that these become public and
7 disclosed, and revealed to everyone, you have to be
8 in a position to say, "Well, I was wrong." They can
9 possibly, potentially, theoretically they contain
10 things that were not under the deliberative process,
11 but were still significant. You're in a no different
12 position than a new lawyer coming into this case who
13 would say, "My client's previous lawyer was wrong.
14 They do contain this information." Why is it that
15 you were compromised? You say personally you,
16 yourself, were compromised, as opposed to your
17 client?

18 A I think the premise of your questions, Mr. Goodman,
19 are erroneous and I say that --

20 Q I accept, respectfully. Go ahead.

21 A I was not in the same position as a new lawyer coming
22 in. As I indicated to you before, I had conducted
23 extensive investigations about these matters. I
24 talked to a litany of folks who were inside the City
25 about it. While I hadn't seen these records, I told

1 the judge that I was convinced that there were
2 supportive deliberative privileges and that if you
3 looked, you would find them there. So when you get
4 that a point as a lawyer, you have to make a judgment
5 of what's in the best interest of your client, and at
6 that point I felt that going forward, to continue to
7 represent him with regard to the SkyTel matters, my
8 judgment -- my professional judgment in my 30 plus
9 years as a lawyer, it was in my best interest to
10 withdraw.

11 Q But only after the SkyTel matters, or the entire
12 representation?

13 A SkyTel. By that time, the SkyTel matters had grown
14 to proportions of a brand new issue. It was not
15 simply a subcategory; it was an issue in and of
16 itself.

17 Q Yeah, we're going to get to that in a moment, because
18 that's on the next page, but just for the moment, at
19 the bottom of page six it says that you met with your
20 client on October 19th, 2007; do you see that?

21 A Yes.

22 Q Even before you met with him or at some point during
23 that day, did you learn that under the Freedom of
24 Information Act a request had been made by the
25 Detroit Free Press for all settlement documents and

1 information regarding Brown, Nelthrope, and Harris?

2 A No.

3 Q Are you aware -- by the way, did you either review or
4 watch Mr. Stefani's testimony here on Monday?

5 A I saw some clips of Mr. Stefani's testimony. I did
6 not review it, but I saw some clips of it and I've
7 also read his deposition transcript from this.

8 Q I'm going to attempt to summarize just one part. He
9 testified that after the 19th of October, there was a
10 meeting between himself, yourself, Mr. Copeland, and
11 perhaps maybe to work on some details of the
12 settlement. You indicated to him that there would
13 have to be two agreements, rather than the previous
14 single agreement, and that the reason for that was
15 that the newspapers had filed for Freedom of
16 Information Act. Is that -- assuming for the moment
17 that is his testimony, is that accurate?

18 A Let me answer that gently by saying my recall is that
19 nothing like that happened. There was no separate
20 meeting with Mr. Stefani. There was a discussion
21 with Mr. Stefani that I had about the Freedom of
22 Information Act, and that discussion took place
23 sometime between the 22nd of October and maybe the
24 5th of December. So it was not the 19th or 20th. It
25 was sometime between the 26th of October and the 5th

1 of December. The reason I give such a broad period
2 of time is we worked in spurts. We worked on the job
3 and then we'd stop, and then we'd work, and then we'd
4 stop.

5 Q Well, just so I'm clear, and I certainly don't want
6 to mislead on this point. I'm not saying that Mr.
7 Stefani said this conversation between yourself and
8 him and others occurred on the 19th. I'm saying that
9 he testified that at some point, perhaps during the
10 period you've talked about, it was -- he was notified
11 that there would have to be two agreements, and that
12 the reason for that was because of the Freedom of
13 Information Act request. Was that -- did that
14 conversation happen?

15 A A conversation similar to that occurred.

16 Q Go ahead.

17 A During our negotiations of the Confidentiality
18 Agreement -- and by the Confidentiality Agreement, I
19 mean the personal and private Confidentiality
20 Agreement -- Mr. Stefani was trying to determine, in
21 a number of questions he posed, what was going on
22 behind the scenes. He did not know that I had
23 decided to withdraw. He did not know many of the
24 things that I was doing associated with my withdrawal
25 from the SkyTel matter. He wanted to know why the

1 language in the Confidentiality Agreement had
2 references to personal and private matters, created
3 to not bind his client to the law. I advised him
4 that I fully expected that the Free Press and the
5 News were going to file a Freedom of Information Act
6 attempt. I said that they were going to file on
7 October the 17th because throughout this case, every
8 significant event that occurred was followed by a
9 Freedom of Information Act request. I believed that
10 he would want to know if one was coming, and I told
11 him a Freedom of Information Act was going to be
12 coming, and that I believed that my client had the
13 right to have his personal privacy to exemption
14 protected. There is a specific statutory exemption
15 for personal privacy privilege, and I told him that
16 that is what I was trying to do --

17 Q A personal privacy exemption from a Freedom of
18 Information Act request is a privilege that can be
19 inserted by governmental bodies, their attorneys, and
20 their agents; isn't that right?

21 A And the Mayor is such a governmental body
22 independently of the City.

23 Q Right. On the other hand, the Mayor's agreement, the
24 second confidentiality agreement, the one we called a
25 private agreement, was private and not signed by

1 Kwame Kilpatrick as Mayor, but signed by Kwame
2 Kilpatrick as private citizen; is that right, sir?
3 A That's true. And -- and these debates about the
4 nuances of the Freedom of Information Act are
5 certainly (inaudible) what you're asking, Mr.
6 Goodman, I think is the same thing -- the same
7 question would be posed (inaudible) a body itself.
8 Let's assume that the City was going to protect
9 something for an individual employee. It would still
10 be the body itself protecting that employee's
11 personal privacy rights. So it's the same thing,
12 only on a smaller scale.
13 Q Well, I mean that is actually a good segue into the
14 next line of questioning, if I may, which gets to
15 what City Council was told, as opposed to what was
16 kept from the press. Going to tab four in that
17 spiral book there. This is the Lawsuit Settlement
18 Memorandum and I believe it was prepared by Ms.
19 Osmauede and approved by Mr. Johnson. Have you seen
20 this before?
21 A Yes.
22 Q Was this shown to you before it was presented to City
23 Council?
24 A No.
25 Q When did you see it?

1 A Either when it was published in the paper by the Free
2 Press or shortly before that.

3 Q Were you ever advised by counsel for the City, either
4 Mr. Copeland, Mr. Johnson, Ms. Osamuede, that City
5 Council or would not be told about the existence of
6 the Confidentiality Agreement that accompanied this -
7 - settlement?

8 A No, there was no discussion about it.

9 Q Why don't you go to page seven of your statement
10 there? In the second bold paragraph on that page,
11 you state that on October 27th, Kwame Kilpatrick
12 rejected the proposed October 17th, 2007 opt-in
13 settlement agreement, and signed the Notice of
14 Rejection dated October 27th, 2007. "I drafted the
15 Notice of Rejection on or before October 27, 2007."
16 Do you see that?

17 A Yes.

18 Q And just so that you have it in front of you, that
19 would be tab seven -- excuse me -- tab five of our
20 little book here.

21 A Yes.

22 Q Is this the agreement that you drafted?

23 A Yes.

24 Q Or the notice that you drafted?

25 A The notice, yes.

1 Q Did you file this notice?

2 A This is not a pleading; this is a notice.

3 Q It's captioned as a pleading; is it not.

4 A It has a caption on it, but it's not a pleading.

5 It's a notice.

6 Q Did you send this notice to anyone?

7 A I delivered it.

8 Q To who?

9 A Mr. Stefani.

10 Q And when did you deliver it?

11 A December 5th, 2007.

12 Q You prepared this either before or on October 27th;

13 is that correct, sir?

14 A Yes.

15 Q And when did the Mayor sign it, if you can recall?

16 A I cannot -- I do not know the date.

17 Q And this in your mind constituted a rejection of the

18 first Settlement Agreement, which we have already

19 looked at, which is dated October 17th, 2007; is that

20 correct?

21 A Correct.

22 Q At the bottom of page seven you state, quote, "Since

23 the proposed opt-in agreement had been rejected" --

24 so that would mean rejected by this document; is that

25 correct, sir?

1 A Correct.

2 Q -- "New documents were drafted to resolve issues
3 related to the private rights of Christine Beatty
4 regarding possible cause of action against the
5 Plaintiffs and their attorneys." Could you explain
6 what that is all about?

7 A We submitted a correction to that last line because
8 there was a phrase missing, so let me give you the
9 phrase.

10 Q Go ahead.

11 A It should read --

12 Q I'm sorry about that.

13 A -- "The documents were drafted to resolve issues
14 related to the private rights of the individuals,
15 including Ms. Beatty's rights regarding a possible
16 cause of action against Plaintiffs and their
17 attorneys."

18 Q Okay. Going back to what you called private -- what
19 you had referred to as the private rights of the
20 individuals, what do you mean by that?

21 A Let's begin with Ms. Beatty.

22 Q Okay.

23 A The document Mr. Stefani had prepared contained a
24 paragraph in it that sought to have Ms. Beatty
25 surrender her private cause of action against Mr.

1 Stefani and the Plaintiffs. The order of this matter
2 had originated from the Harris case, which I was not
3 involved in. But apparently, the inappropriate use
4 of subpoenas in the Harris case had left an order by
5 Judge Warfield Moore. Notwithstanding that order,
6 Ms. Beatty's records had been obtained and somehow
7 disclosed to the public or to the press, and she had
8 a cause of action -- at least she perceived she had a
9 cause of action against Mr. Stefani and his clients
10 for those alleged misdeeds. Only Ms. Beatty had the
11 right to negotiate away her personal and private
12 right to a lawsuit. I did not represent Ms. Beatty
13 and no one at that meeting on October 17th
14 represented Ms. Beatty in her personal capacity that
15 I was aware of, and so Ms. Beatty's rights to a
16 lawsuit was not something that could be included in
17 the agreement where the City, in effect, somehow
18 agreed that her personal privacy rights would be
19 saved.

20 Q Mr. McCargo, I'm going to interrupt you for just a
21 moment here. Eventually, a Confidentiality Agreement
22 was entered into on December 5th; am I right?

23 A Yes.

24 Q And that agreement included a release by Ms. Beatty
25 for any claim that she may have against Mr. Stefani

1 or his clients.

2 A Right.

3 Q Am I right about that?

4 A Yes.

5 Q In connection -- and Ms. Beatty signed that release;
6 is that right?

7 A Her signature, as I know it, was on that document.

8 Q Was she ever represented, as far as you know, in the
9 drafting of that agreement or the signing of that
10 agreement?

11 A I did not represent her. Whether she obtained
12 independent, separate legal counsel, I do not know.

13 Q But no counsel ever participated from your
14 perspective in the negotiation of this agreement or
15 its conclusion; am I right?

16 A For Ms. Beatty?

17 Q Yes, for Ms. Beatty.

18 A There was no lawyer ever appearing at the table
19 representing Ms. Beatty.

20 Q So your concern that existed on October 17th when the
21 original agreement was drafted was consistent to
22 December the 5th when the final agreement was
23 concluded; that is that she was unrepresented in
24 terms of her own rights. Am I right about that or
25 not?

1 A No. My concern would continue. It was my assumption
2 that Ms. Beatty had, in fact, obtained counsel, had
3 been represented, and somehow been advised before she
4 executed the document. I did not represent her.

5 Q Now, under tab six in our little book here is
6 something entitled "Notice of Mayor Kwame
7 Kilpatrick's Approval of Terms and Conditions of
8 Settlement, as approved by City Council on October
9 25th, 2007"; do you see that?

10 A Yes.

11 Q Did you draft that?

12 A Yes.

13 Q When did you draft this?

14 A Shortly before November the 1st. It was in between
15 that period of the 26th of October and November the
16 1st.

17 Q When did the Mayor sign it?

18 A I don't know the exact date.

19 Q You indicated that you do not know whether this body
20 was ever advised as to the confidentiality provisions
21 in the -- in the two settlement agreements; am I
22 right about that?

23 A Yes, sir.

24 Q So when this approval of the terms and conditions of
25 the settlement as approved by City Council on October

1 23rd, do you know whether among those terms and
2 conditions there was a confidentiality agreement that
3 the Council approved or not?

4 A I do not.

5 Q Did you assume that there was and that they --
6 Council was informed of that confidentiality
7 agreement?

8 A I made no assumption one way or the other.

9 Q Did you ask?

10 A I asked if it had been approved. I did not ask any
11 details and I was advised that Council had approved
12 the settlement. That's the only information I got.

13 Q Going to tab seven; the Settlement Agreement and
14 General Release was prepared by whom, sir?

15 A I believe it was prepared by Mr. Stefani.

16 Q And you worked with Mr. Stefani in drafting the terms
17 of the agreement; am I right about that?

18 A I did. I viewed and critiqued the language, yes.

19 Q And it was signed, ultimately, on what date? It
20 appears to be December 5th.

21 A There were two dates that it was signed. It was
22 originally signed on November 1, 2007. I believe all
23 of the parties originally expected that we'd get all
24 of the documents resolved on November 1. Both are
25 dated that date, and apparently, Mr. Stefani had his

1 client sign this document on November 1st. We didn't
2 have the document and it was not produced to the
3 Defendants or the City until December 5th.

4 Q Let me just go back to something I missed to clarify.
5 Going back to tab six, the notice of approval of the
6 terms and conditions of settlement that was already
7 talked about, that was never filed with any court or
8 clerk; is that right?

9 A Oh no. That was for Mr. Stefani.

10 Q Exactly as was the rejection notice?

11 A Yes. Those were specifically for Mr. Stefani.

12 Q And I would like to say that I said in questioning
13 yesterday that these documents were filed; that was a
14 mistake on my part. They were drafted and executed,
15 but I guess not filed with the clerk; is that
16 correct, sir?

17 A Correct.

18 Q Now --

19 COUNCIL PRESIDENT PRO TEM CONYERS:

20 Mr. Goodman?

21 MR. GOODMAN: Yes.

22 COUNCIL MEMBER COCKREL: Mr. Kenyatta?

23 COUNCIL MEMBER KENYATTA: Let me make
24 sure I understand that last question about filing
25 with the court. Can you repeat that?

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MR. GOODMAN: Yes.

COUNCIL MEMBER KENYATTA: The notice was drafted, but never filed with the court; is that what you're saying?

MR. GOODMAN: Yes. Let me -- let me pursue that just a little bit further.

BY MR. GOODMAN:

Q Why were these documents never filed? They have a caption of the case on them; why were they never filed with the court, sir?

A Under the October 17 agreement, the parties agreed that they would give each other notice of their acceptance or rejection. There was nothing in the agreement that required or contemplated filing anything with the court. We were to exchange notices among each other, and so this document was the notice contemplating the settlement agreement of the 17th, and therefore it was delivered to Mr. Stefani and there as never the expectation it was to be filed.

Q So speaking as the lawyer for the Mayor and the person drafting both of these documents, you have no question, even though it was never filed with the court or the court clerk, that the rejection constituted a full, final, complete, and formal rejection of the settlement that was drafted on

1 October 17th; am I right about that?

2 A Correct.

3 Q Nor do you have any question --

4 COUNCIL PRESIDENT PRO TEM CONYERS:

5 Are you finished with him?

6 MR. GOODMAN: Well, just one other
7 question.

8 COUNCIL MEMBER COCKREL: Do you have a
9 question?

10 COUNCIL MEMBER COCKREL: Is that
11 legal?

12 MR. GOODMAN: Not to file?

13 COUNCIL MEMBER COCKREL: Not to file
14 this document? This binding and public -- this is
15 not a binding and public incorporation?

16 MR. GOODMAN: Mr. McCargo?

17 COUNCIL PRESIDENT PRO TEM CONYERS:
18 Can you answer that?

19 THE WITNESS: Yes. I think that what
20 may be misleading is that there is a caption on it.
21 That document could have been filed on a plain sheet
22 of paper with absolutely nothing on it and it would
23 have accomplished the same thing. It could have been
24 on letterhead and it would have accomplished the same
25 thing. Probably what you're saying is based on that

1 there is a caption on there.

2 BY MR. GOODMAN:

3 Q Nonetheless, this constituted an effective instrument

4 of rejection, right?

5 A Yes, between the parties.

6 Q And do you know whether a copy of that rejection was

7 ever provided to Detroit City Council?

8 A I don't know.

9 Q With regard to the notice of the Mayor's approval,

10 that also in your mind constituted an effective

11 instrument for approving the settlement that was

12 drafted on, I guess November 1st, and ultimately

13 signed on December 5th; am I right about that?

14 A The Mayor's approval. The Mayor's approval.

15 Q And that constituted a valid approval of the

16 agreement as you understood it?

17 A By the Mayor.

18 Q By the Mayor. Do you know whether that was ever

19 provided to City Council?

20 A It was -- I don't know if it was provided to City

21 Council. I know that I did not provide it to City

22 Council because the agreement was that it be provided

23 to Mr. Stefani.

24 Q Now finally, going to tab nine, we have a document

25 entitled Confidentiality Agreement. You see that; is

1 that right?

2 A Yes.

3 Q Who drafted that?

4 A Mr. Stefani and I.

5 Q And you signed it?

6 A No.

7 Q No? Excuse me. You did not. This was signed -- the

8 signature that I want to specifically talk about here

9 is the signature of the Mayor. Under that signature

10 line is typed the name Kwame Kilpatrick. You see

11 that; is that right?

12 A Yes.

13 Q Was there a conscious decision not to put the title

14 "Mayor Kwame Kilpatrick" there?

15 A Yes.

16 Q Whose conscious decision was that?

17 A It was agreed between Mr. Stefani and I that this was

18 a document between the personal individuals involved

19 in this, and that they would be identified in that

20 way.

21 Q Now, with regard to effectuating this Confidentiality

22 Agreement and the work that you did on it, did you

23 bill the City of Detroit for that work?

24 A No.

25 Q Did you bill anyone for that work?

1 A That's confidential.

2 Q Did you bill -- did you work on obtaining a safety
3 deposit box in which these documents would be stored
4 while pending the completion of this deal?

5 A Yes.

6 Q Did you bill the City of Detroit for that work?

7 A I did not.

8 Q Did you bill anyone for that work?

9 A That's privileged.

10 COUNCIL PRESIDENT PRO TEM CONYERS:

11 Did you say it was privileged and did you bill anyone
12 for that? How is that privileged?

13 MR. GOODMAN: President Pro Tem, I
14 think what the witness is saying is that the City did
15 not pay him for that particular --

16 COUNCIL PRESIDENT PRO TEM CONYERS: I
17 thought they charged for that.

18 MR. GOODMAN: That, I think, may have
19 been another witness.

20 COUNCIL MEMBER COCKREL: It was Mr.
21 Copeland. He said he paid, Mr. Copeland.

22 BY MR. GOODMAN:

23 Q As far as you were concerned, Mr. McCargo, was this
24 confidentiality provision a material term of the
25 settlement, both in terms of the original settlement

1 agreement, the opt-in provision -- opt-in agreement,
2 which was dated October 17th, and the final two
3 agreements, Settlement Agreement and Release, and
4 Confidentiality Agreement?

5 A It was originally an equal component of the opt-in
6 agreement. When the opt-in agreement was rejected,
7 it, like all of the other provisions fell
8 specifically as to the Mayor. When it was included
9 in the next agreement, an entirely different set of
10 facts had emerged, and it became the subject of other
11 material factors causing it to be included in this
12 separate document.

13 Q Could this case have ever been settled with the
14 Mayor's approval, with your client's approval,
15 without the execution of the Confidentiality
16 Agreement?

17 A If you're asking me on October 17th, could this case
18 have settled with the circumstances that were facing
19 us that day without some form of a confidentiality
20 provision, the answer to that question is no. If
21 you're asking me could this case have ever settled
22 without a confidentiality provision of this nature,
23 the answer is I believe it could have.

24 Q I'm not asking the latter part. I'm asking this, to
25 be more precise; could this case have settled on

1 December the 5th, 2007, without the existence of that
2 Confidentiality Agreement?

3 A Yes. It was separated out at that time.

4 Q So that you're saying that had Mr. Stefani had not
5 signed the conf -- separate private confidentiality
6 agreement, this settlement still would have gone
7 forward and the case would have been settled and the
8 money would have been given to the Plaintiffs and the
9 Plaintiffs' attorneys?

10 A I -- I do not doubt that there would have been some
11 significant dispute, maybe even litigation, had it
12 gone forward without the consummation of the
13 Confidentiality Agreement. But the truth of the
14 matter is they were separated. The signatures on the
15 documents were different. Had Mr. Stefani accepted
16 the signatures on the other documents and refused to
17 sign the Confidentiality Agreement, or his clients
18 refused to sign the Confidentiality Agreement, the
19 deal would have been done without it.

20 Q And the money would have been paid?

21 A That's what I'm saying. There's been a dispute about
22 that, Mr. Goodman, but the documents -- drafted --
23 they were signed. Mr. Stefani was in the driver's
24 seat on that.

25 MR. GOODMAN: President Pro Tem, I

1 have no more questions, but I'm sure members of
2 Council do.

3 COUNCIL PRESIDENT PRO TEM CONYERS:
4 Council Member Cockrel.

5 COUNCIL MEMBER COCKREL: Thank you.
6 Good morning.

7 THE WITNESS: Good morning.

8 COUNCIL MEMBER COCKREL: The -- the
9 October 17th notice of rejection and the October --
10 November 1 notice of acceptance by -- of the terms
11 and conditions, that -- signed by Mayor Kilpatrick,
12 were those provided to Mr. Johnson and Ms. Osamuede?

13 THE WITNESS: I believe that these two
14 notices were provided to Ms. Osamuede on December the
15 5th.

16 COUNCIL MEMBER COCKREL: But these are
17 not legal documents, even though they have captions.
18 Can you explain to me why somebody -- they seem to
19 have chatted with each other and not just come up
20 with one single story, why did this get appealed to
21 the Supreme Court to keep it from Council and from
22 the general public? If they're such irrelevant
23 documents, they're all entitled Exhibit Ten, Exhibit
24 Nine; why was there this effort to keep them not
25 public?

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THE WITNESS: If you're asking me
about the --

COUNCIL PRESIDENT PRO TEM CONYERS:
One second, Mr. McCargo. Please keep in mind that
you have four questions.

COUNCIL MEMBER COCKREL: Thank you.

THE WITNESS: If you're asking me --

COUNCIL MEMBER COCKREL: I asked you
the specific question -- answer that question, not
your interpretation of what my question is. The
question I asked, sir.

THE WITNESS: There are two Supreme
Court appeals. I just want to know which one,
Council Member, that's all.

MR. GOODMAN: I believe -- I believe
and -- that -- that Council Member Cockrel is talking
about the Supreme Court appeal and the Freedom of
Information Act litigation that followed the
settlement of this matter.

THE WITNESS: I have no knowledge of
decision-making (inaudible). I was not involved.

COUNCIL MEMBER COCKREL: Next
question. You indicated that the reason that you got
out of representation of Mr. -- Mayor Kilpatrick is
because you -- because of the bits and pieces you had

1 heard about the text messages and your view of the
2 deliberative process privilege, that you felt you
3 were being manipulated by Mr. Stefani. Did you or
4 did you not feel manipulated by your client?

5 THE WITNESS: That's a privileged
6 matter.

7 COUNCIL MEMBER COCKREL: You're
8 refusing to answer because it's privileged?

9 THE WITNESS: Yes, ma'am.

10 COUNCIL MEMBER COCKREL: Okay. The --
11 and then one last question. I think you've probably
12 gave us some back and forth on this, but on -- as
13 regards the confidentiality agreement related to Ms.
14 Beatty's allegedly private text messages and her
15 private bank records, it certainly looks to the
16 observer from the outside that his lawyers, in this
17 case you're telling us it was you, negotiated on her
18 behalf -- and helped getting her to sign these
19 records. Why did you do that, if you were
20 representing the Mayor in his official capacity as a
21 -- as the Mayor of the City and it's private?

22 THE WITNESS: The Christine Beatty
23 issues were inserted in the proposed agreement by Mr.
24 Stefani. One of the key components of that agreement
25 was that it would not be binding. The entire intent

1 behind that agreement was to take it back to the
2 parties to have the parties review the agreement and
3 review the information we had, and to get
4 instructions and directions. And so to take the
5 document back was not something that I felt was a
6 problem, but I did not have the authority to
7 ultimately commit for Ms. Beatty on this matter.

8 Mr. Goodman?

9 MR. GOODMAN: Yes.

10 THE WITNESS: There was one portion of
11 the question that Council Cockrel asked me and I
12 didn't answer about the documents; are they legal. I
13 wanted to make sure that it is clear that this is a
14 legal and binding document. The fact that it is a
15 notice does not make it something that is not legal
16 or binding. The fact that it is shared between the
17 parties does not remove from it its legal and binding
18 status. I just want to make sure that I'm not
19 leaving the record suggesting because this is a
20 notice and because it didn't go to the court, it's
21 not legal and binding.

22 MR. GOODMAN: You're talking about the
23 rejection the subsequent acceptance?

24 THE WITNESS: Yes.

25 MR. GOODMAN: All right, thank you.

1 If you have something to say, the President Pro Tem
2 is presiding at this point, so if you want to clarify
3 anything, just address your thoughts to her.

4 THE WITNESS: Okay.

5 COUNCIL PRESIDENT PRO TEM CONYERS:

6 I'm next, followed by Council Member Kenyatta, then
7 Council Member Jones, and Council Member Tinsley-
8 Talabi.

9 Do you think -- do you believe that by
10 Mr. Stefani coming in here and testifying as it
11 relates to things in the Confidentiality Agreement,
12 that he's breached the elements of that agreement?

13 THE WITNESS: Judge Colombo entered an
14 order essentially relieving him of responsibility
15 from breaching the elements of that agreement, so I
16 believe that he was insulated by the court and by the
17 court's order from that.

18 COUNCIL PRESIDENT PRO TEM CONYERS: Do
19 you think that the handing of the envelope to you by
20 Mr. Stefani was in any way, shape, or form could be
21 considered extortion?

22 THE WITNESS: I do not believe that
23 I'm in a position to say if it is or is not
24 extortion. I can tell you that it was my feeling
25 that the envelope was sent in order to force

1 continued negotiations, and there was nothing said in
2 the discussions that suggested to me that a premium
3 was being requested. In other words, that tied to
4 the envelope was a request for additional monies. So
5 what that -- what those facts taken together as a
6 whole mean, I'm not prepared to render an opinion on
7 that. But that's how I felt.

8 COUNCIL PRESIDENT PRO TEM CONYERS: On
9 page six of your statement you state that, "I also
10 concluded that I would have to withdraw from
11 representation of my client in the SkyTel matters
12 because my ability to effectively represent him had
13 been compromised." Can you tell us why you felt that
14 they had been compromised?

15 THE WITNESS: As a lawyer, one of the
16 main assets you bring to the representation of your
17 client, in my estimate, is the trust and confidence
18 that you can generate in your relationship with the
19 court, with other lawyers, and with individuals that
20 you work with to represent your client. I felt that
21 my previous unadulterated commitment to this theory
22 that the only thing that were in these records that
23 were privileged was governmental deliberative process
24 matters. It put me in a position that if I now had
25 to go and try to argue that no, it is something else

1 in these documents, that key asset I brought, the
2 trustworthiness, the integrity, the confidence in my
3 word in dealing with the court and other parties
4 would be a serious detrude to my client. I didn't
5 believe that I could be believed.

6 COUNCIL PRESIDENT PRO TEM CONYERS: My
7 last question is why did you believe the jury would
8 award millions of dollars in damages to the
9 Plaintiffs?

10 THE WITNESS: It was my hope that in a
11 jury case that we would be able to get the jury to
12 turn to what looks like the 12 angry men in the
13 movie. By that I mean that they would go into the
14 jury room and they would seriously deliberate over
15 the case and take time to go over it, and they would
16 think with each other about this case. I did not
17 know -- I cannot put a finger on what triggered it,
18 but at some point in the trial, it appeared to me
19 this jury decided that they were not going to
20 deliberate and they were going to enter the jury room
21 and simply go straight to dollars and cents. I don't
22 know what triggered that, because the way the case
23 went in was not at all inconsistent with the way we
24 expected it to go.

25 COUNCIL PRESIDENT PRO TEM CONYERS:

1 Thank you. We have questions by Council Member
2 Kenyatta, followed by Council Member Jones.

3 COUNCIL MEMBER KENYATTA: Thank you,
4 Council President Pro Tem. Mr. McCargo?

5 THE WITNESS: Yes, sir.

6 COUNCIL MEMBER KENYATTA: In your
7 written statement on page four, you describe getting
8 the package from Mr. Stefani and what existed in the
9 package, and you not having the knowledge of matters
10 that were associated with the motion. You then say,
11 "I informed the other defense attorneys that the
12 Plaintiff attorney alleged that he had obtained the
13 SkyTel records that had been the subject of an in-
14 camera only production order issued by the court on
15 October the 26th. The order had been issued to
16 protect against improper disclosure of governmentally
17 privileged material." Then you go on to say that
18 after defense counsel had conferred with their
19 clients by phone, and after the City attorneys were
20 joined by John Johnson; what clients were conferred
21 with by phone?

22 THE WITNESS: It is my understanding
23 that the City attorney present, Valerie Colbert-
24 Osamuede, had called her superior, who was Mr.
25 Johnson.

1 COUNCIL MEMBER KENYATTA: Now, you
2 indicate that her clients; Johnson is not her client.
3 You said that after the defense counsel had conferred
4 with their clients by phone. Who were -- your client
5 was the Mayor of the City of Detroit.

6 THE WITNESS: Yes, sir.

7 COUNCIL MEMBER KENYATTA: Who were
8 their clients, as well?

9 THE WITNESS: My understanding of the
10 contact that Ms. Osamuede had made to get authority
11 to participate in this negotiations was to contact
12 her boss, Mr. Johnson. I did not know if she had to
13 go further than that, but that was what I was led to
14 believe, that the settlement authority that she
15 needed, she had to go through him to get that
16 authority.

17 COUNCIL MEMBER KENYATTA: Okay. Now,
18 when we look at the court records, it's clear that
19 the clients are the City of Detroit?

20 THE WITNESS: Yes, sir.

21 COUNCIL MEMBER KENYATTA: Christine
22 Beatty, the Mayor of the City of Detroit, and I
23 believe that may include the police chief. Mr.
24 Johnson is not her client. I think you wrote it very
25 clear, but your answer is not very clear. Are you

1 again indicating that she contacted her client? Not
2 Mr. Johnson.

3 THE WITNESS: I stand corrected then.
4 My understanding was that she needed to speak to her
5 superiors, or maybe my statement should be corrected
6 here, and I should not have said she contacted her
7 client. I think that's an excellent point, sir.

8 COUNCIL MEMBER KENYATTA: Maybe you
9 should have said it, but it's very clear that if you
10 represent someone, that you have to -- because you
11 already stated that you didn't even have the
12 authority to go beyond the scope, to expand on the
13 scope. So someone -- Mr. Johnson doesn't have that
14 authority, so someone -- Council definitely didn't
15 give him that authority; we didn't even know you all
16 were meeting. So clearly, someone had to give the
17 authority for Mr. Johnson to go there and go beyond
18 the scope, but I don't know.

19 My next question is this; we have tab
20 four, tab five, tab six, tab seven, tab eight, and
21 tab nine, all representing Exhibit Ten, Eight,
22 Thirteen, all of these various agreements; settlement
23 agreements; rejection of the settlement agreement;
24 approval of the settlement agreement. And all of
25 these, and a few of which you wrote, which is the

1 notice of the approval and notice of the rejection,
2 correct?

3 THE WITNESS: Yes, sir.

4 COUNCIL MEMBER KENYATTA: And the
5 rejection is the rejection of the Settlement
6 Agreement of October the 17th?

7 THE WITNESS: Correct.

8 COUNCIL MEMBER KENYATTA: Right.
9 Which at some point, a settlement was reached. I
10 received a call, and then Council, by way of the
11 Internal Operations Committee, were presented with
12 what was agreed upon on October the 17th. However,
13 what you're saying is that what was agreed upon on
14 October the 17th was not binding?

15 THE WITNESS: Yes, that's correct.

16 COUNCIL MEMBER KENYATTA: So can you
17 give us an understanding how is it that if you didn't
18 come to a final conclusion, how is it that it could
19 be presented to this body for approval?

20 THE WITNESS: The only way I can
21 answer that, Council Member Kenyatta, is that any
22 time I have dealt with a public body, and I've dealt
23 with cases that go to the public body for approval,
24 and any time when I've dealt with facilitations --
25 specifically with facilitations, the lawyers leave

1 the agreement -- leave the meeting with the
2 understanding that the agreement is not final because
3 you never have the authority to act for a public body
4 in a meeting in that fashion. And the public body
5 has to meet and it can only as a group open meetings
6 when it is assembled as that body, and so lawyers who
7 represent the body in negotiating those kinds of
8 settlements never can leave that agreement with a
9 final agreement; they can only leave with a tentative
10 or proposed agreement. They have to get the
11 agreement of their --

12 COUNCIL MEMBER KENYATTA: So what
13 you're saying to us is that the parties that you
14 negotiated with on that night came to us the next
15 morning and presented to us an agreement that had not
16 been finalized, that was approved -- or actually
17 wasn't approved on the 18th, and actually it was
18 passed on without recommendation, and was sent then
19 to the full body, which gave them another weekend to
20 approve this thing. It was sent to the full body by
21 October the 23rd, which then was approved by Council.
22 You're saying that that agreement that you all worked
23 out in the wee hours of the night on the 17th was the
24 agreement that had not been finalized, but yet was
25 approved by Council on October the 23rd?

1 THE WITNESS: That's my understanding
2 of what happened.

3 COUNCIL PRESIDENT PRO TEM CONYERS:
4 That was five. Council Member Jones?

5 COUNCIL MEMBER JONES: Good morning,
6 good afternoon. My first question is I want to go to
7 tab nine, which is the Confidentiality Agreement.
8 You indicated that you had had drawn up this
9 Confidentiality Agreement?

10 THE WITNESS: I negotiated this with
11 Mr. Stefani.

12 COUNCIL MEMBER JONES: As I look
13 through this Confidentiality Agreement, and even
14 directly at page six, it indicates that Kilpatrick,
15 Beatty, and the City of Detroit agree to submit this.
16 Quite often, you reference the City of Detroit and
17 the City; however, this Confidentiality Agreement is
18 signed by Kwame Kilpatrick personally, not as the
19 Mayor, but personally. How do you reference to the
20 City or the City of Detroit, and how can Kilpatrick,
21 Beatty, and the City of Detroit agree to do something
22 when this is signed by someone personally? Can you
23 explain that to me, as the attorney?

24 COUNCIL PRESIDENT PRO TEM CONYERS:
25 Just a second. Let the record reflect we have now

1 been joined by Council Members Collins.

2 THE WITNESS: The reference to the
3 City of Detroit in this paragraph has to do with the
4 exhibits that had been generated during the trial of
5 this case. We had generated a number of copies of
6 exhibits and these are not documents that were in Mr.
7 Stefani's hands. These were documents that were in
8 the lawyers' hands, some of which were even still
9 over in the courtroom. They didn't have all of these
10 documents that connected it up in the courtroom.
11 This reference to the City of Detroit here does not
12 constitute an active reference to the City of Detroit
13 doing anything. It has to do with the exhibits that
14 were used in the trial, and that's what was being
15 returned here, the originals and exhibits that were
16 used in the trial. The exhibits that were used in
17 the trial were used as exhibits not only for -- for
18 the Mayor, but also for the City of Detroit. They
19 were (inaudible) exhibits.

20 COUNCIL MEMBER JONES: But you
21 indicated in number one, Plaintiff Kilpatrick and the
22 City of Detroit have heretofore agreed to settle.
23 How can you say that the City of Detroit had agreed
24 to do -- how can -- even the people that signed this,
25 Kwame Kilpatrick, personally; Christine Beatty,

1 personally -- how -- the City of Detroit have agreed
2 to do if you -- representing him the Mayor, you're
3 representing him personally?

4 THE WITNESS: I think you're referring
5 now back to the first page of the Confidentiality
6 Agreement. That is a recital provision, which means
7 we are essentially stating where the facts stand at
8 that time. This is not a provision to say that the
9 City is going to do anything, or that the Mayor is
10 going to do anything, or that the parties are going
11 to do anything. This is simply stating where the
12 matter -- at that time. And as of November 1st, this
13 was an accurate factual statement. The City had, in
14 fact, approved that settlement.

15 COUNCIL MEMBER JONES: You indicated
16 that you had not filed any of these notices. Would
17 you or would you not say in -- in going to the notice
18 of rejection and any of the other notices, that it
19 would be misleading if the caption on it indicates
20 State of Michigan, Circuit Court; it -- it -- looking
21 at it, this is something that is to be filed.

22 THE WITNESS: I did not perceive that
23 it would be misleading at all because it was going to
24 be exchanged between lawyers, and the lawyers knew
25 exactly what the documents were, and what the intent

1 and purpose of the documents were. This is not
2 something that would have to be explained to someone
3 who was not actively involved in the case as a
4 lawyer, and for that reason, I did not believe that
5 it would be confusing to those who would receive it.

6 COUNCIL MEMBER JONES: Okay, thank
7 you.

8 COUNCIL PRESIDENT PRO TEM CONYERS: Do
9 you want to be back on the list? Council Talabi?

10 COUNCIL MEMBER TINSLEY-TALABI: Thank
11 you very much, President Pro Tem. Good afternoon,
12 sir.

13 THE WITNESS: Yes, ma'am.

14 COUNCIL MEMBER TINSLEY-TALABI: Mr.
15 McCargo, you were hired to represent the Mayor in the
16 Brown/Nelthrope case. You also worked with other
17 attorneys representing the City in that case as well.
18 Can you tell me; were you considered to be the lead
19 attorney in Brown/Nelthrope versus (inaudible) case?

20 THE WITNESS: For purposes of the
21 actual trial of the case, my office took
22 responsibility for coordinating the activities of the
23 trial. We did not have a formally designated lead,
24 but my office did take responsibility for most of the
25 coordination of activities for trial.

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COUNCIL MEMBER TINSLEY-TALABI: So is
your answer yes or no?

THE WITNESS: My answer is that there
was no designated lead counsel.

COUNCIL MEMBER TINSLEY-TALABI: And
can you elaborate, sir, on how you and the other
attorneys, particularly Mr. Copeland and Ms. Colbert-
Osamuede, worked together on the case? Did you meet
to discuss this case and -- strategy?

THE WITNESS: Yes, ma'am. We met
throughout the case on strategy, and also on division
of labor. We met throughout the case on sharing
activities to reduce the cost involved in litigation.
We met to coordinate our activities with regard to
witnesses and the like, again, to make sure that we
kept cost down as best as we could. The problem was
that with several lawyers involved, if you do not
carefully coordinate what you did in the case, you
end up with a lot of duplication of efforts. So we
tried very hard to avoid duplication of efforts and
to make sure that we contained costs the best we
could.

COUNCIL MEMBER TINSLEY-TALABI: Can
you tell me if you and Mr. Copeland and Ms. Colbert-
Osamuede all reached an agreement?

1 THE WITNESS: No, we are not always in
2 agreement, and we were not always in agreement on
3 this case.

4 COUNCIL MEMBER TINSLEY-TALABI:
5 Particularly in terms of how to defend the Mayor and
6 the City?

7 THE WITNESS: I do not believe that we
8 had any significant differences in that regard, but
9 there were some strategic and solid weaknesses that
10 we had to work out and resolve among ourselves.

11 COUNCIL MEMBER TINSLEY-TALABI: And
12 can you tell me when the supplemental attorney fee
13 motion was given to you on October the 17th, did you
14 discuss that document with Ms. Colbert-Osamuede and
15 Mr. Copeland, and if so, did the three of you talk
16 about it?

17 THE WITNESS: I told Mr. Copeland that
18 Mr. Stefani had provided me with his document and in
19 it, he was alleging that he had obtained copies of
20 the SkyTel records that none of us should have had
21 because of the court order. Shortly after I spoke to
22 Mr. Copeland about that, Ms. Osamuede exited the
23 building and joined us. I repeated that information
24 to her.

25 COUNCIL MEMBER TINSLEY-TALABI: Thank

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you.

THE WITNESS: That was the extent of
it, yes.

COUNCIL PRESIDENT PRO TEM CONYERS:
Let's see; the Council President has me down again.

My question to you, Mr. McCargo, is
that you said that you had no authority on behalf of
your client to recommend a settlement. So if you're
his lawyer and you can't recommend it to him, then
who -- who recommends it?

THE WITNESS: If I said that, let me
stand corrected. I surely didn't mean to say that.
I said that I did not have the authority to settle.
I said the only authority that I had was to recommend
to him. If I misspoke, I apologize.

COUNCIL PRESIDENT PRO TEM CONYERS:
Okay. My next question to you is do you feel that
there was an intent by you or anyone else to keep
pertinent information away from the City Council in
an effort to deceive or mislead this body?

THE WITNESS: No.

COUNCIL PRESIDENT PRO TEM CONYERS:
Mr. Stefani stated that because he had gotten these
text messages, because the judge said to get the text
messages again, he asked that they come directly to

1 him because the judge did not state specifically,
2 quote/unquote. And after he said he didn't receive
3 them the first time, that during the second time he
4 said just get them; that he didn't clarify for them
5 to come to him. In most cases, do you view that when
6 a judge has already given one decision and says
7 something to me, that he doesn't mean that when he
8 tells you again to get them, that he doesn't want
9 them sent to him?

10 THE WITNESS: I understand exactly
11 what you're saying. I think the problem with Mr.
12 Stefani's position is a larger one than what you
13 described. The court speaks through written orders.
14 There was a written order directing where those
15 records were to go. If Mr. Stefani wanted a
16 different order, a different directive from the
17 court, he would be required to get the court to amend
18 the order. I might note that the order that was in
19 place at that time was an amended order that Mr.
20 Stefani had received. It had been amended to begin
21 with. So Mr. Stefani knew there was a written order
22 and I knew there was a written order, and the judge
23 did not issue anything in writing changing that
24 order.

25 COUNCIL PRESIDENT PRO TEM CONYERS: My

1 last question to you is if the only person who has
2 the quote/unquote "messages," is Mr. Stefani, and he
3 took the fifth as to how he got -- how he got them,
4 how do you feel that he obtained the documents, if
5 Mr. Stefani is the only person who has them?

6 THE WITNESS: I don't know how they
7 got them. I have been troubled by that since the
8 beginning.

9 COUNCIL PRESIDENT PRO TEM CONYERS: He
10 refused to give a copy to you or anyone else until
11 the Settlement Agreement, but the news media got
12 them.

13 THE WITNESS: I have no idea how that
14 happened and I'd probably be as frustrated as you are
15 about having no answers to that question.

16 COUNCIL PRESIDENT COCKREL: Council
17 Member Reeves is next, followed by Council Member
18 Cockrel.

19 COUNCIL MEMBER REEVES: Mr. President,
20 I do not have any questions at this time, because
21 most of them have already been answered. I asked in
22 a previous meeting how did the press get the text
23 messages, and it still hasn't been answered, so I'm
24 going to continue to listen.

25 COUNCIL PRESIDENT COCKREL: You're

1 going to continue to do what?

2 COUNCIL MEMBER REEVES: To listen.

3 COUNCIL PRESIDENT COCKREL: Then
4 Council Member Cockrel will be next.

5 COUNCIL MEMBER COCKREL: Thank you.
6 Mr. McCargo, on this text message matter, the motion
7 that you were shown by Mr. Stefani, it was your
8 testimony earlier that you thought that there was
9 some language that raised concerns to -- my question
10 is, as an officer of the court, did you or did you
11 not -- in terms of what you read, did it raise for
12 you the issue that, my goodness, there is at least
13 the appearance that perjury had been committed by the
14 Mayor of the City of Detroit and his chief of staff,
15 and as an officer of the court, I have an obligation
16 to report this matter immediately?

17 THE WITNESS: My understanding of my
18 obligations of an officer of the court, as controlled
19 by the Michigan Rules of Professional Conduct, would
20 not have required me to make any such disclosure,
21 given the information that I had.

22 COUNCIL MEMBER COCKREL: And then just
23 to paraphrase some of Mr. Stefani's testimony the
24 other day on the subject of the Confidentiality
25 Agreement. He certainly to me left an impression

1 that kind of what happened was he continued to beef
2 up the Confidentiality Agreement quit pro quo in
3 exchange for keeping the text messages secret.
4 Something had to be done for -- by Mr. Brown in
5 reference to records. Is that what you -- is that
6 your recollection of what occurred in this matter, or
7 what is -- what is your testimony? Clearly at this
8 point, to this Council member, something is wrong.

9 THE WITNESS: When we originally
10 decided to initiate negotiations on the 17th of
11 October, the message that was sent to Mr. Stefani
12 before we even began exchanging numbers back and
13 forth was that we did not believe that Council would
14 be interested in receiving any proposal for
15 settlement unless there was some significant change
16 achieved in our negotiations with Mr. Stefani. There
17 was no discussion with Mr. Stefani about putting in
18 front of Council documents like Christine Beatty's
19 financial records. That would not have been anything
20 that Council would have, in my estimate, considered a
21 significant factor in settling this case, and I
22 certainly made no such statement to Mr. Stefani about
23 that.

24 I stated to him very clearly through
25 the facilitator that we would have to achieve a

1 significant financial savings in order to proceed
2 with the recommendations for settlement for Council,
3 and both my client.

4 COUNCIL MEMBER COCKREL: I was
5 referring, sir, to the Confidentiality Agreement, and
6 not to what Council -- because at this point there
7 clearly was an agreement to not -- that there was
8 going to be a bunch of information not provided to
9 this Council and you needed to beef up the
10 Confidentiality Agreement that wasn't going to be
11 able to come to Council.

12 THE WITNESS: No. There was no
13 comment to Mr. Stefani to that effect. No.

14 COUNCIL MEMBER COCKREL: So you never
15 -- you're saying you never had any kind of
16 conversation to that?

17 THE WITNESS: I never told Mr. Stefani
18 that we needed to put something in this
19 Confidentiality Agreement to beef it up so that it
20 could come by Council for approval.

21 COUNCIL MEMBER COCKREL: Thank you,
22 Mr. President.

23 COUNCIL PRESIDENT COCKREL: Council
24 Member Kenyatta is next.

25 COUNCIL MEMBER KENYATTA: Thank you,

1 Mr. President. Mr. McCargo, when you were out in the
2 parking lot and you had the motion in hand, and then
3 was joined by the other attorneys representing the
4 City, what was the basis of the discussion that led
5 to the contacting the clients and the bringing Mr.
6 Johnson to the scene? What was the factor that
7 brought this to a point?

8 THE WITNESS: In my estimate there
9 were three factors that brought this to that point.
10 One was Mr. Stefani's production of this document
11 given to me, and what I saw in the document I've
12 explained to you. Everything I did that day, every
13 action I made was based upon information that I was
14 given, and everything that I got factored into my
15 decision-making. So from my perspective, that was
16 one of the factors. The other factor is that when
17 the facilitator came and pulled me out to share that
18 document with me, he didn't just put it in my hand;
19 he and I had a conversation. He told me at that time
20 that Mr. Stefani wanted to negotiate three cases. It
21 wasn't just two, but three cases. There was another
22 case about a Rufus Fluker (ph) or something of that
23 nature, totally unrelated to this case. It was
24 Brown, Harris, and Fluker, and that information was
25 shared with me by the facilitator, I shared with the

1 other defense counsel. I cannot speak for them, but
2 I know in my thinking, those were -- those were two
3 factors. The third factor from my side, which may
4 not have been a factor from their side, was I needed
5 to know what the City was interested in, because it
6 didn't make sense to me to call the Mayor if the City
7 was not interested in negotiating this matter. The
8 City has the money, so from my standpoint, three
9 factors. Was the City interested, the scope of the
10 negotiations, and the fact that Mr. Stefani claimed
11 he had in his hands the SkyTel records that had very
12 sensitive material.

13 COUNCIL MEMBER COCKREL: Let's try to
14 get a fix on what happened first. The facilitator
15 came out and the facilitator had left the other
16 parties, but he only discussed with you out in the
17 parking lot about the fact that he wanted to include
18 the other individuals, or had he already discussed
19 that with the other attorneys before it got to you in
20 the parking lot?

21 THE WITNESS: I do not know if he
22 stopped and had a conversation with them before they
23 came out of the building to the parking lot. What I
24 do know is this; the first conversation we had with
25 the facilitator, all of the defense lawyers were

1 sitting in the same room. The first time he came in
2 and mentioned this global settlement issue. Then he
3 said that it was Brown and Harris, Brown and Harris,
4 but I assumed he was speaking of Brown. Then he had
5 the discussion with me at the time he delivered the
6 package. He then told me that Mr. Stefani wanted to
7 discuss and negotiate global settlements for three
8 cases. No one was there with me when the facilitator
9 shared that information.

10 COUNCIL MEMBER KENYATTA: Right, okay.
11 But again, your testimony is that one of the key
12 factors to you is the introduction of this motion and
13 the fact that -- if I follow what you're saying here,
14 but the fact that there was some explicit and maybe
15 damaging information in the motion as it related to
16 text messages?

17 THE WITNESS: I suspected that, but I
18 was almost certain that deliberately the information
19 was there. And I was as frightened about that as
20 anything else that had come up that we could talk
21 about. Because if he was sitting in his hands with
22 information about security systems for the City,
23 employees of the security forces even at the mansion
24 or inside the City, collective bargaining agreements,
25 other pending litigation, and if he was prepared to

1 disclose that to the public, it was to me a very,
2 very risky and a very explosive situation. I felt
3 that it would be foolhardy not to engage in
4 negotiations with him to try somehow to get control
5 of something that could be very explosive.

6 COUNCIL MEMBER KENYATTA: Okay. And
7 finally, with the various different settlement
8 agreements, confidentiality agreements, rejections,
9 approvals, text messages, it does not, or does it,
10 bother you at all that even though some of these
11 agreements called for Council approval, does it
12 bother you at all that none of them, none of it, was
13 put before Council until it was finally released by
14 the court?

15 THE WITNESS: I have represented
16 public bodies and it's been my experience that in
17 matters of litigation, discussions take place with
18 public bodies in private in closed sessions that
19 allow for the full scope of discussions. If you were
20 to ask me what my expectation would have been looking
21 from outside at how discussions of this nature would
22 take place, it would have been my expectation a
23 closed session with extended and expanded discussion
24 and all of Council's questions answered.

25 COUNCIL MEMBER KENYATTA: I'm through,

1 Mr. President, but just for the record, none of that
2 was revealed in closed session as well. Thank you.

3 COUNCIL PRESIDENT COCKREL: Council
4 Member Jones is next, followed by Council Member
5 Tinsley-Talabi, and then President Pro Tem.

6 COUNCIL MEMBER JONES: Going back to
7 the Confidentiality Agreement, and in that
8 Confidentiality Agreement that was signed by
9 Kilpatrick and Beatty (inaudible), it indicates that
10 any -- Kilpatrick's or Beatty's personally or any of
11 their personal attorneys or agent -- and I -- and I'm
12 not going to read the whole thing -- violates this
13 agreement. It includes liquidated damage to be paid.

14 Now, in drawing up this
15 Confidentiality Agreement, who -- if they violated
16 this, who was to pay this -- in your mind \$100,000.00
17 or \$200,000.00? Was it going to be the City or was
18 it going to be Kilpatrick as a person, or Beatty as a
19 person?

20 THE WITNESS: This provision was
21 limited solely to Kilpatrick and Beatty as personal
22 and individual liabilities.

23 COUNCIL MEMBER JONES: If this
24 particular part was limited to Kilpatrick as a person
25 and Beatty as a person, but the whole agreement was

1 City, assume the amount of the whole agreement of the
2 settlement, the City is paying that settlement
3 amount. How do you -- I'm still trying to understand
4 how you scope out the person, the personal person, as
5 opposed to the Mayor of the City?

6 THE WITNESS: It's a very difficult
7 situation. It's problematic to any public body and
8 it gets more problematic the higher up you go in that
9 body. In my experience over my years of working with
10 public bodies, this is always a significant problem.
11 However, all of the comments are placed where the --
12 where the personal interests and rights are separate
13 and distinct of those of the public interests in the
14 matter. There is no clear cut line, but there is
15 always balancing from a legal standpoint. The
16 question becomes when is it that the risk and
17 exposure faced by the individual is greater than the
18 risk or exposure faced by them in their public
19 capacity. When you determine that there is a risk
20 for exposure that is significantly greater to the
21 individual, I think then there is a need to look at
22 the personal rights and personal interests. I wish
23 that I could tell you that there is a high line we
24 draw, but there is none. It's a matter of balancing.

25 COUNCIL MEMBER JONES: Mr. Stefani in

1 his testimony indicated that when he dragged you in
2 the parking lot, you made a statement, "I didn't
3 know." Do you recall that statement?

4 THE WITNESS: I remember him saying
5 that, that I said something like that, but I don't
6 believe that was exactly the phrase that I used. It
7 was something very similar to that.

8 COUNCIL MEMBER JONES: Do you know
9 what you were referring to?

10 THE WITNESS: It would have been that
11 I don't know anything about any of this, and I think
12 that's what I said.

13 COUNCIL MEMBER JONES: Thank you, Mr.
14 McCargo.

15 COUNCIL PRESIDENT COCKREL: Council
16 Member Tinsley-Talabi is next. I thought she sat
17 down. Then we'll have the President Pro Tem is next,
18 since she's not here, so then it goes back to Council
19 Member Cockrel.

20 COUNCIL MEMBER COCKREL: Thank you.
21 Mr. McCargo, I want to get back to some general
22 information here. In your statement you indicate
23 that you have an of-counsel relationship and chair
24 the firm's litigation group. Now, as counsel, I
25 guess I'd like to get an understanding of how an --

1 how is of-counsel and how does that relate to
2 chairing the litigation group?

3 THE WITNESS: They are two separate
4 and distinct facets of my relationship with Lewis and
5 Munday. Of-counsel relationships usually evolve when
6 a lawyer who has been in either a senior capacity or
7 a higher specialized area joins a firm, and they join
8 that firm usually because the firm has some
9 prospective plans, or growth, or change in
10 development. Of-counsel relationship usually comes
11 with an obligation to somehow train and direct other
12 lawyers, or even assist in the development of
13 departments. That is how an of-counsel relationship
14 initiates.

15 In my specific case, it initiated and
16 was tied directly to my chairmanship of the
17 litigation group, and so one of my responsibilities
18 in addition to practicing actively, is to assist with
19 the growth and development of the litigation group.
20 I chaired that group and often it is more
21 facilitation than it is chairing.

22 COUNCIL MEMBER COCKREL: Your firm has
23 been engaged with Council and the City of Detroit for
24 many, many, many, many years. Indeed, in the so-
25 called stimulus package, the Wage and Tax Revenue --

1 the mention of it, there are six lawyers from Lewis
2 and Munday who are listed in the distribution list as
3 being involved in that activity. Are you personally
4 in any way, shape, or form involved in the
5 securitization of the so-called stimulation --
6 stimulus package?

7 THE WITNESS: No.

8 COUNCIL MEMBER COCKREL: Okay. And do
9 you represent the City now in any other matters?

10 THE WITNESS: Yes.

11 COUNCIL MEMBER COCKREL: Could you
12 provide this Council with a list of what those
13 matters are, and who in those cases you believe
14 you're representing?

15 THE WITNESS: Would you like me to
16 submit that to you in writing?

17 COUNCIL MEMBER COCKREL: I would
18 appreciate that. I would not expect that off the
19 top, but I think we need to be crystal clear, so
20 we're all crystal clear on who you think you're
21 representing and who we think you're representing. I
22 mean, all right. The Council President suggested if
23 you know it, please run through it right this minute.

24 THE WITNESS: I don't know all of that
25 right now. I'd prefer to submit it writing.

1 COUNCIL MEMBER COCKREL: Well, why
2 don't you give us, to the best of your recollection,
3 your current cases that you represent the City of
4 Detroit in?

5 THE WITNESS: Sure. I'm representing
6 the City of Detroit Police Department in a series of
7 trial board matters involving out of a sting action
8 that took place in the federal sector.

9 COUNCIL MEMBER COCKREL: Excuse me.
10 What does federal sector mean?

11 THE WITNESS: It means it would be the
12 FBI and the federal courts, so proceedings in the
13 federal court where these individuals were charged
14 with criminal activity and they were successful in
15 obtaining acquittal. But after the acquittal, they
16 face internal administrative disciplinary charges.
17 So I represent the police department in following
18 those cases through to their conclusion. There are a
19 series of them that I've been involved in. I serve
20 as an umpire for labor employment cases.

21 COUNCIL MEMBER COCKREL: Anything
22 else?

23 THE WITNESS: Those are some I can
24 pull off of the top of my head.

25 COUNCIL MEMBER COCKREL: If you'll put

1 that in writing after you review it. Could you
2 provide -- please provide this Council with an
3 itemized set of invoices that the public dollars are
4 being used to pay for your representation of your
5 client, Mayor Kwame Kilpatrick, un-redacted invoices.

6 THE WITNESS: I believe I've already
7 done that.

8 COUNCIL MEMBER COCKREL: Thank you.
9 Well, just make sure we get it, because there is a
10 problem with the Law Department and we don't get a
11 lot of cooperation. Thank you.

12 COUNCIL PRESIDENT COCKREL: President
13 Pro Tem?

14 COUNCIL PRESIDENT PRO TEM CONYERS:
15 Thank you. Mr. Goodman, did you give him a copy of
16 Mr. Stefani's handwritten notes, work product notes?

17 MR. GOODMAN: I've done that already.

18 COUNCIL PRESIDENT PRO TEM CONYERS:
19 You have?

20 MR. GOODMAN: Yes.

21 COUNCIL PRESIDENT PRO TEM CONYERS:
22 Okay. Mr. Stefani stated that -- in that document
23 that he had written, handwritten himself, he stated
24 that the corrections that were made were not his
25 handwriting. Were you the person who changed any of

1 those terms on that document, or is that your
2 handwriting on there above his, that he is alleging
3 is not his?

4 THE WITNESS: Some of it is.

5 COUNCIL PRESIDENT PRO TEM CONYERS:
6 Some of it is yours?

7 THE WITNESS: Yes.

8 COUNCIL PRESIDENT PRO TEM CONYERS:
9 Okay. And so, why did you change any of those terms
10 on there?

11 THE WITNESS: Mr. Stefani wanted to
12 destroy the documents, the SkyTel records, and I
13 disagreed with that. I rejected that notion
14 altogether. I felt it was inappropriate to destroy
15 any documents, so if you look on the first page you
16 will see that the word destroy is crossed out. In
17 the margin you'll see surrender. I also was
18 concerned that Mr. Stefani had additional copies of
19 the SkyTel records. I think I've already mentioned
20 that. I asked him did he have any additional copies.
21 He and I discussed that.

22 COUNCIL PRESIDENT PRO TEM CONYERS: I
23 heard that, and his response was that he had one at
24 home in his safe.

25 THE WITNESS: Yes, that's correct.

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The other changes on that are not mine.

COUNCIL PRESIDENT PRO TEM CONYERS:

Whose were they?

THE WITNESS: I don't know. I don't know if this is Mr. Stefani's handwriting, if they're Mr. Rivers' handwriting. I really don't know the handwriting.

COUNCIL PRESIDENT PRO TEM CONYERS:

But of the ones that are kind of slanted on this, and the margins are yours?

THE WITNESS: Yes.

COUNCIL PRESIDENT PRO TEM CONYERS:

All right.

THE WITNESS: On the second page, up top you see the term specific amount.

COUNCIL PRESIDENT PRO TEM CONYERS:

Yes.

THE WITNESS: That looks like my handwriting.

COUNCIL PRESIDENT PRO TEM CONYERS:

Okay.

THE WITNESS: At the bottom, I cannot tell. In the bottom left-hand corner, if that's my handwriting or not; it may be. Going to the page with item number four on it, is there a page number

1 on there?

2 COUNCIL PRESIDENT PRO TEM CONYERS:

3 Yes.

4 THE WITNESS: The mark above the four
5 that says Plaintiffs.

6 COUNCIL PRESIDENT PRO TEM CONYERS:

7 Yes.

8 THE WITNESS: That appears to be my
9 writing.

10 COUNCIL PRESIDENT PRO TEM CONYERS:

11 Okay.

12 THE WITNESS: I think that's all.

13 COUNCIL PRESIDENT PRO TEM CONYERS: My
14 next question is were there any factors or prejudices
15 that you believe that the jury had which contributed
16 to the verdict, and how do we minimize these types of
17 things in future litigation against the City?

18 THE WITNESS: I have a philosophical
19 perspective on that, and I also have presented some
20 newspaper articles in this case of some of the jurors
21 after the case. That's the limited scope of my
22 knowledge. What the jurors said after the case --
23 Mr. Sharp (ph), I believe it was, was very vocal
24 about his actions and why he took those actions, and
25 his participation in getting other jurors to go along

1 with him. My own assessment was his activities were
2 a bit more than I would expect of an individual juror
3 in a case of that nature. Regarding the overall
4 general issue of the jury panel and the issue to be
5 faced here in Wayne County, I think this case is
6 indicative of the problems that the court and the
7 chief judges who are working over the last, I'd say
8 three years. There is a problem here. We know there
9 is a problem and the court has been working on that
10 problem, and I don't disagree that some adjustments
11 need to be made. I think all of that factored in to
12 some extent.

13 COUNCIL PRESIDENT PRO TEM CONYERS:

14 Also, it was alleged in the paper that someone felt
15 that the judge gave Mr. Stefani the text messages,
16 and I disagreed with that. Do you disagree with that
17 also?

18 THE WITNESS: I have no reason to
19 believe that the judge gave Mr. Stefani --

20 COUNCIL PRESIDENT PRO TEM CONYERS: Or
21 ever had them.

22 THE WITNESS: I don't know that he had
23 them, but I think the judge's comment was he could
24 not find them, and I have no reason to doubt the
25 judge's representation that they were either

1 misplaced, lost in his courtroom, or somehow not
2 stored so that they could be secured.

3 COUNCIL PRESIDENT PRO TEM CONYERS: My
4 last question is you stated that Ms. Beatty had a
5 claim in her personal position that now she's signed
6 away when she signed off on this Confidentiality
7 Agreement; is that correct?

8 THE WITNESS: Yes, ma'am.

9 COUNCIL PRESIDENT PRO TEM CONYERS:
10 Thank you.

11 COUNCIL PRESIDENT COCKREL: That is
12 the last question, unless there are any other Council
13 members who have additional questions. I have no
14 questions for you, sir. I'll turn it back over to
15 Mr. Goodman for some closing questions.

16 I think after we're done with Mr.
17 McCargo, we should probably look into taking a lunch
18 break.

19 MR. GOODMAN: It seems that both of
20 our afternoon witnesses are here, so we're ready
21 after lunch to go on.

22 BY MR. GOODMAN:

23 Q Mr. McCargo, you have indicated that you were very
24 concerned about public disclosure of what you
25 considered to be deliberative process information

1 such as security measures around the mansion, labor
2 negotiations, contract negotiations, and so on; is
3 that right?

4 A That's correct.

5 Q Given the sensitivity of some of those matters and
6 given your own doubts about how Mr. Stefani had
7 acquired this information, and possibly having
8 disregarded or flaunted the order of Judge Callahan,
9 did you or your co-counsel either consider or discuss
10 the possibility of immediately applying with Judge
11 Callahan for a protective order in the hearing, so
12 that this information would not be disclosed, and
13 could be protected through the orders of the court?

14 A I did not discuss that with the other attorneys. I
15 can tell you that I considered it myself. I did not
16 believe that that was a realistic option because I
17 did not believe that this matter would be treated any
18 differently than Judge Callahan had treated the
19 issues in this case all along. Judge Callahan's
20 approach was to make as much as possible public as
21 soon as it became available to either the attorneys
22 or the court. And it was my judgment that if that
23 occurred, it would defeat the whole purpose of trying
24 to bring some control to this whole situation and buy
25 some time to really find out what was in that text.

1 Q Well, I'm sure in your many years of experience have
2 encountered situations where a trial judge has not
3 necessarily been well disposed to one of your
4 clients, and you sought immediate appeal proceedings
5 and protective orders from the Court of Appeals and
6 the Supreme Court; is that not the case?

7 A Yes. That has happened on occasion.

8 Q And it could have happened here?

9 A Yes. And I also had some concern about -- my concern
10 is I was well aware of how the Court of Appeals has
11 responded to this matter. There was an extensive
12 opinion written by the Court of Appeals on this case.
13 Going back to the Court of Appeals, it almost
14 scripted a roadmap for how this case should be
15 pursued by the Plaintiffs. My feeling was that going
16 up the appellate block, it not had been one where we
17 could have expected a lot of success as well.

18 Q I'm now talking specifically about protecting very
19 sensitive information. Did you have reason to
20 believe the Court of Appeals would not be forthcoming
21 in that regard?

22 A Not so much forthcoming. I had no reason to believe
23 that the kind of protection that felt we needed, we
24 would be able to get either at the Circuit Court
25 level or at the Court of Appeals level.

1 Q Mr. McCargo, I'll ask you to turn to tab nine in our
2 spiral book, and I want to refer to the liquidated
3 damages provisions that Member Jones has already
4 referenced.

5 A Yes, sir.

6 Q Do you see that in the event that the Confidentiality
7 Agreement was breached and the parties would then
8 have to pay liquidated damages; you see that, right?

9 A Yes. Which one?

10 Q It doesn't matter, any of them. In all cases, if
11 there were liquidated damages, they would go to whom?

12 A In the case of Kilpatrick and Beatty, if they were
13 paying liquidated damages, they went to the
14 Plaintiffs.

15 Q Yes.

16 A In the case of the Plaintiffs, if they breached this,
17 it would go to the City of Detroit.

18 Q Who negotiated this particular portion of the
19 agreement on behalf of the City of Detroit?

20 A The City of Detroit was not involved in this
21 provision -- in the negotiation of this provision at
22 all.

23 Q But the City of Detroit's interests were addressed in
24 this; is that correct?

25 A The first party beneficiary right was created for the

1 City of Detroit in this document.

2 Q Presumably, the idea was that if there was disclosure
3 of this information, it could be damaging for the
4 City of Detroit; is that right?

5 A Part of this information could have been damaging to
6 the City of Detroit.

7 Q And the question I have is whether the amount of
8 liquidated damages to go to the City of Detroit was
9 too little, just enough, or perhaps too much?

10 A With the fact that there was going to be a clause
11 that addressed the City of Detroit's protected
12 interest, there are two types of privileged matters
13 for sensitive matters in the documents. One type was
14 the governmental privilege, and the other type had to
15 do with personal and private. The dollar amount here
16 was tied to the personal privacy, not the
17 governmental. So the negotiations here, if you look
18 at the language, the language speaks constantly to
19 the personal privacy, not to the City rights. So the
20 value first of the liquidated damage clause was tied
21 to personal privacy rights, not the City's
22 governmental.

23 Q Which brings me to the next -- the next point.

24 Throughout this period of time, this whole period of
25 time we've been talking, you were acting as the

1 attorney for Mayor Kwame Kilpatrick; is that correct?

2 A Yes.

3 Q And that was pursuant to an agreement that you had

4 with the City of Detroit?

5 A Yes. I had a fee agreement with the City of Detroit

6 in writing, and I believe you have a copy.

7 Q Yes. In front of you is a blue binder with -- excuse

8 me. Not a blue binder. I apologize. I want you to

9 turn to tab eight. No, seven. Do you see that

10 there?

11 A I do.

12 Q Is that your -- your scope of services within this

13 contract?

14 A Yes, it is.

15 Q And this is the scope of services that you were

16 functioning under throughout this period of time; is

17 that correct?

18 A Correct.

19 Q And the scope of services is that you are to assist

20 the City of Detroit Law Department by providing legal

21 representation to the City of Detroit -- excuse me --

22 to Mayor Kwame Kilpatrick in this case; is that

23 right?

24 A The specific language of the services under my

25 services.

1 Q So that is the basis on which you acted in
2 negotiating this confidentiality agreement?

3 A Yes. That coupled with my obligations to assist in
4 preserving the rights of my client as I was
5 withdrawing from representation. So there were two
6 things operating there.

7 Q And in negotiating the Confidentiality Agreement, is
8 it in fact the case that you were assisting the City
9 of Detroit Law Department?

10 A In negotiating this particular Confidentiality
11 Agreement, I was withdrawing from the representation,
12 and in withdrawing from the representation, the
13 primary entity that was being represented would have
14 been the Mayor himself, not the City of Detroit.

15 Q But you were functioning under the scope of services
16 provision in your agreement?

17 A But I did not charge the City anything for what I did
18 under this agreement, Mr. Goodman, and so none of the
19 services I provided here that I charged the City for,
20 because these were not within the scope of services
21 for which I was billing and for which I was charging
22 the City.

23 Q Did you enter into a new attorney/client agreement
24 for purposes of undertaking that scope of your work?

25 A I did not have to enter into a new attorney/client

1 contract.

2 Q So I take it the answer is no to that question.

3 A For the City, I did not enter into a new agreement

4 with the City.

5 Q With anyone?

6 A I did not enter into a new agreement with anyone.

7 Q Finally, I would ask you, Mr. McCargo, turn to in the

8 blue binder or folder Exhibit Four; do you see that?

9 A Yes.

10 Q And this is a specific breakdown of the way in which

11 disbursement of the settlement was to be made; is

12 that correct?

13 A It appears it is.

14 Q And it's dated November 1st, 2007?

15 A Yes.

16 Q On the second page of that letter the following

17 statement is made, quote, "It is further agreed that

18 this is agreement shall remain confidential and its

19 terms shall not be revealed to any person or entity,

20 except as may be required by state or federal tax

21 authorities concerning proper tax reporting of the

22 settlement payment provided in this agreement." Do

23 you see that line?

24 A I see that.

25 Q Was it your understanding that that -- that contract

1 -- excuse me -- that letter states not revealed to
2 any entity, that that entity would include Detroit
3 City Council?

4 A I did not negotiate this agreement.

5 Q You saw this, however?

6 A I had seen it, yet.

7 Q Did you come to an understanding as to what that
8 phrase meant?

9 A I did not. I was not involved in those negotiations.

10 Q Now, why don't you just follow me and turn to tab
11 three, and in there is -- and by the way, these are
12 documents that I have received from you?

13 A Yes.

14 Q And I congratulate you on being forthcoming in your -
15 - in the subpoena that was served on you on that.
16 Tab three is an e-mail from you with regards to an e-
17 mail from Mr. Stefani; is that correct?

18 A Correct.

19 Q And at the top it is highlighted. Are you referring
20 to the letter that we just reviewed under tab four in
21 this?

22 A I may be referring to the letter, and I may be
23 referring to the language that was in Mr. Stefani's
24 original proposed settlement agreement.

25 Q And that was in addition to all of the other terms of

1 the settlement, there would be something about
2 someone's pension that would be beefed up at some
3 point or another; is that right?

4 A I don't recall what we were trying to accomplish. I
5 recall, Mr. Goodman, that there were discussions
6 about allocation language. Mr. Stefani was the
7 individual who had real concerns about written
8 allocation language. The issue was whether it should
9 be in the agreement or not in the agreement. I felt
10 it should not be in the agreement. It appeared to me
11 that Mr. Stefani and the City were not making a lot
12 of progress in resolving that, so I sort of withdrew
13 from discussions about that and said, "The two of you
14 handle it as you deem fit." It really didn't make a
15 difference to me.

16 Q But at the top of the page it says in highlighted
17 language again as a part of it, and I quote, "This
18 language would be overkill and would require sending
19 the agreement terms back to Council for another
20 approval. I do not think anyone wants to do that";
21 do you see that language?

22 A I see that language and I was later informed that my
23 assumptions about the pension rights were totally
24 wrong and that the issues I was raising there simply
25 did not apply to the City.

1 Q Well, when you said that nobody wants to go back in
2 front of Council, were you concerned about Council
3 taking a second look at the overall settlement?

4 A No. I was -- no. I was concerned that this side
5 matter, the allocation language, was a small minor
6 insignificant matter that the parties would be able
7 to work out without any problem, and that this is not
8 the kind of thing that should force this matter to be
9 reopened again.

10 MR. GOODMAN: Mr. President, that
11 concludes my questioning. I would like to thank very
12 much Mr. McCargo for appearing today and for
13 answering questions. I thank his attorney for
14 attendance today.

15 COUNCIL PRESIDENT COCKREL: Before we
16 excuse Mr. McCargo, Council Member Kenyatta did have
17 one question.

18 COUNCIL MEMBER KENYATTA: Thank you.
19 I'm still trying to understand these outside
20 documents that would kind of give the impression that
21 the State of Michigan and the Circuit Court in the
22 County of Wayne, but they really weren't filed there.
23 It's my understanding they were not filed and these
24 were settlements documents and agreements between the
25 various parties, even though it talks about approval

1 Council, yet Council had never seen them.

2 The first -- the one document is the
3 notice of Mayor Kwame Kilpatrick's approval of the
4 terms and condition of settlement, as approved by
5 City Council. This is dated November the 1st. It
6 says, "Now comes the Defendant, Mayor Kwame
7 Kilpatrick, and hereby provides the notice of his
8 approval." But the most important thing, it also
9 says Mr. Harris, Mayor Kilpatrick, and the City of
10 Detroit indicates the Defendant, and more
11 specifically Defendant Mayor Kilpatrick, approves the
12 terms and conditions of settlement, as described and
13 set forth in the Settlement Agreement and Release
14 Agreements executed by the parties and dated November
15 the 1st. And then the Confidentiality Agreement in
16 section one says the Kwame Kilpatrick and the City of
17 Detroit have henceforth agreed to settle and resolve
18 the order of dismissal and settlement, and this
19 release is dated November the 1st. And then, finally
20 it is signed and number ten says, "In witness
21 thereof, the parties have signed this agreement on
22 November 1st." The Confidentiality Agreement and
23 notice of approval all on the same date, indicating
24 that Council had taken some action as it relates to
25 the Settlement Agreement that took place on November

1 the 1st. Can you kindly explain that? Because
2 again, as we have said to you, Council was not aware
3 of anything that took place on November the 1st, so
4 how is it that it could inject Council into approving
5 something that it didn't even know exists?

6 THE WITNESS: -- the documents, that
7 is the notice of approval, if you look at the title,
8 the very first line says, "Notice of Mayor Kwame
9 Kilpatrick's approval of terms and conditions of
10 settlement, as approved by City Council on October
11 23rd, 2007."

12 COUNCIL MEMBER KENYATTA: Right.

13 THE WITNESS: So this is an approval
14 of what Council did on the 23rd. The November 1st
15 date was the date that everyone expected to resolve
16 this matter, to have all of the documents signed. So
17 we were preparing the documents for signature and
18 almost all of them have the November 1 date, because
19 that's when we expected we were going to have our
20 closing. We were going to sign all of the documents
21 and we would close this matter, and we would move on
22 to the dismissal. And so, if you look at these
23 documents, the Harris/Brown settlements, you look at
24 the acceptance dated November 1, they are all signed
25 -- signed on the November 1 date.

1 COUNCIL MEMBER KENYATTA: Correct.
2 And I understood that. I understood the two
3 different dates being there, but the body of the
4 language insinuates that there was some action again
5 by Kwame Kilpatrick and the City of Detroit had
6 henceforth agreed to settle and resolve through
7 orders of dismissal and Settlement Agreement and
8 Release, November 1st for the total amount. So I
9 understand what you're saying, but it also indicates
10 that Council somewhere agreed to this agreement that
11 you all agreed to on November the 1st, and we did
12 not. Thank you, sir.

13 THE WITNESS: You're right, sir. This
14 is referencing that (inaudible) --

15 COUNCIL MEMBER KENYATTA: Yes, it
16 does.

17 THE WITNESS: Thank you.

18 COUNCIL PRESIDENT COCKREL: Council
19 Member Cockrel?

20 COUNCIL MEMBER COCKREL: This is back
21 on the Confidentiality Agreement, the liquidated
22 damages issue. I'm still not clear, since you were
23 representing Mr. Kilpatrick personally, Mr. McCargo,
24 how you could negotiate a liquidated damages clause
25 that would pay damages to the City of Detroit. Maybe

1 you answered this, but it got lost in the
2 translation, so again, what was your authority, your
3 legal basis and authority, if you're representing the
4 Mayor personally, to get liquidated damages on behalf
5 of the City?

6 THE WITNESS: Well, if you're inquiry
7 is to what conversations took place between my client
8 and I, that I cannot answer because that is
9 privileged.

10 COUNCIL MEMBER COCKREL: My question
11 again, and I consider this one question, what, as a
12 lawyer, was your authority to negotiate liquidated
13 damages for the City of Detroit when you represented,
14 by your own testimony repeatedly here today, the
15 Mayor alone?

16 THE WITNESS: My authority was that I
17 was, in fact, representing the Mayor. This document
18 does not contemplate anything that is taken from the
19 City of Detroit. This is a document that
20 contemplates a gifting, a giving to the City of
21 Detroit. It would be the same, Council Member
22 Cockrel, if I were representing Ford Motor Company
23 and they included in an agreement with General Motors
24 that there was going to be a third-party provision
25 for the City.

1 COUNCIL MEMBER COCKREL: So shouldn't
2 that have just said the liquidated damages would be
3 paid to the Mayor and that he would gift this to the
4 City?

5 THE WITNESS: I did not -- no.

6 COUNCIL MEMBER COCKREL: (Inaudible)
7 I think the issue Council Member Kenyatta raised here
8 is we need to look at the resolutions that we passed,
9 because in this it would indicate that on October
10 23rd, that all of this would occur based on properly
11 executed release and settlement agreements entered
12 into -- entered in the Wayne County Circuit Court,
13 case number, as approved by the City Law Department.
14 So this is something going forward that we have to
15 change. Thank you.

16 COUNCIL PRESIDENT PRO TEM CONYERS:
17 Thank you.

18 COUNCIL PRESIDENT COCKREL: Thank you
19 very much. It is about ten minutes to one. I would
20 suggest we take a break for lunch and reconvene at
21 two.

22 COUNCIL PRESIDENT PRO TEM CONYERS:
23 Mr. President, I would just like to state to Mr.
24 McCargo that I think he was the most forthcoming
25 witness that we've had thus far.

1 COUNCIL PRESIDENT COCKREL: If 2:00
2 o'clock is agreeable to everyone, this Committee will
3 stand in recess until 2:00 p.m.

4 (WHEREUPON, a brief recess was taken
5 from 12:51 p.m. to 2:04 p.m.)

6 COUNCIL MEMBER WATSON: Good
7 afternoon. This is the resumption of the session --
8 the legislative session of the Detroit City Council,
9 and we will call upon our special counsel, Mr.
10 Goodman, to introduce our next process.

11 MR. GOODMAN: Thank you, Madam Chair
12 Watson. We have here today with us the next witness,
13 Valerie Colbert-Osamuede. Am I saying your name
14 correctly?

15 MS. COLBERT-OSAMUEDE: Osamuede.

16 MR. GOODMAN: Osamuede?

17 MS. COLBERT-OSAMUEDE: Yes.

18 MR. GOODMAN: Thank you. And her
19 counsel, Mr. Campbell, and I believe her counsel has
20 requested that he make a brief statement before she
21 testifies today.

22 COUNCIL MEMBER WATSON: Could I have
23 the full name of her counsel, please?

24 MR. GOODMAN: Donald Campbell is her
25 counsel, who is going to make a brief statement, and

1 then if we could, I will ask questions and proceed
2 with questioning. I believe that at the end of the
3 questioning, I don't know if it's my questioning or
4 all of the questioning, Ms. Colbert-Osamuede would
5 like -- would like to make a brief statement; is that
6 correct?

7 MS. COLBERT-OSAMUEDE: At the closing
8 of the session.

9 MR. GOODMAN: Okay. With permission
10 of the Chair?

11 COUNCIL MEMBER WATSON: Please
12 continue.

13 MR. GOODMAN: Thank you.

14 MR. CAMPBELL: Thank you Madam Chair;
15 thank you members of the Council.

16 I first want to thank Mr. Goodman for
17 the courtesy and professionalism that he has extended
18 me, and his conduct throughout these proceedings. I
19 appreciate that. Thank you very much.

20 MR. GOODMAN: Thank you.

21 MR. CAMPBELL: Secondly, I wanted to
22 stress to this Council that Valerie is here
23 voluntarily to respond to questions concerning the
24 facts related the Brown and Nelthrope case, and the
25 Harris case. There are several areas of interest to

1 this Council that we will not and cannot discuss.
2 I've outlined these generally to Mr. Goodman and I
3 will state them here so that there is a record of
4 them.

5 First, we cannot and will not discuss
6 anything related to the Freedom of Information
7 lawsuit, which is currently pending in the Wayne
8 County Circuit Court. It is my understanding that
9 the City Council has entered that proceeding as an
10 adverse party to the City of Detroit, which is
11 represented by Corporation Counsel, which is Valerie
12 Colbert-Osamuede's employer and for which she holds a
13 duty and responsibility.

14 Secondly, she will not and cannot
15 comment on Law Department policy. As Council is
16 aware, Mr. Johnson --

17 COUNCIL PRESIDENT COCKREL: Before you
18 proceed, there is a process question from Council
19 Member Kenyatta.

20 COUNCIL MEMBER KENYATTA: Yes. I just
21 wanted to have him repeat the last statement that you
22 made about who she owed her allegiance to.

23 MR. CAMPBELL: I believe I spoke of
24 her employer and her responsibilities, which would
25 include her professional responsibilities, to

1 Corporation Counsel.

2 COUNCIL MEMBER KENYATTA: To the
3 Corporation Counsel, or did you say the City of
4 Detroit?

5 MR. CAMPBELL: She has a
6 responsibility to the City of Detroit. She also has
7 a special responsibility when dealing in matters of
8 litigation, in terms of reporting up the ladder to
9 her supervisor.

10 COUNCIL MEMBER KENYATTA: Thank you.

11 MR. CAMPBELL: May I proceed?

12 COUNCIL PRESIDENT COCKREL: Yes,
13 proceed.

14 MR. CAMPBELL: I've indicated again
15 the Freedom of Information Act litigation, the Law
16 Department policy, and then further, she will not
17 comment or give opinion regarding the conduct of any
18 attorney in any other law matter. Also, she will not
19 answer questions of law. As this Council is aware,
20 under the Charter 6-4.05, when Council seeks opinions
21 or requests advice, they must do so by making that
22 request to Corporation Counsel. Thank you.

23 COUNCIL PRESIDENT COCKREL: All right.
24 Mr. Goodman, you may proceed. However, I also have
25 to ask a question for the sake of process. Given

1 what has been outlined by Ms. Colbert-Osamuede's
2 attorney, where does that leave us to go as far as
3 questioning?

4 MR. GOODMAN: I think there are many
5 fruitful questions that remain that I'm at least
6 happy to attempt. I think we can certainly ask about
7 the -- or I intend to ask about the circumstances
8 surrounding the settlement of the Brown and Harris
9 cases, the manner in which it was brought in front of
10 Council, and the negotiation not only of the monetary
11 amounts, but the confidentiality aspects of those
12 agreements.

13 COUNCIL PRESIDENT COCKREL: A
14 clarification question from Council Member Cockrel.

15 COUNCIL MEMBER COCKREL: Sir, are your
16 remarks in writing? Could you provide us with copies
17 of all that Ms. Osamuede is not talking about?

18 MR. CAMPBELL: If that would be useful
19 to you to have a written copy. I do not have a
20 written copy.

21 COUNCIL MEMBER COCKREL: So would you
22 repeat what you said about law, and when you
23 generally talk about law, what is she not going to
24 talk to us about?

25 MR. CAMPBELL: She will not comment or

1 give opinion of the conduct of other lawyers. In
2 other words, I've witnessed in the course of the
3 proceedings on previous days and even today, that the
4 Council asked for commentary on what do you think of
5 another lawyer's conduct in this matter; was it X, Y,
6 or Z? She will not comment on that.

7 COUNCIL MEMBER COCKREL: Okay, thank
8 you.

9 COUNCIL PRESIDENT COCKREL: Mr.
10 Goodman, proceed.

11 MR. GOODMAN: Thank you. Good
12 afternoon, Ms. Colbert-Osamuede.

13 COUNCIL PRESIDENT COCKREL: One
14 second, Mr. Goodman. Oh, she has not been sworn in
15 as of yet?

16 MR. GOODMAN: No.

17 COUNCIL PRESIDENT COCKREL: Then Ms.
18 Colbert-Osamuede, you need to -- Ms. Monte needs to
19 administer the oath.

20 COURT REPORTER: Do you solemnly swear
21 or affirm to tell the truth, the whole truth, and
22 nothing but the truth, so help you God?

23 MS. COLBERT-OSAMUEDE: So admitted.

24 MR. GOODMAN: Are there any more
25 copies over there in front of you? Do you have any

1 more? These are all documents that I'm sure you've
2 seen.

3 VALERIE COLBERT-OSAMUEDE

4 DULY SWORN, CALLED AS A WITNESS, TESTIFIED AS FOLLOWS:

5 EXAMINATION

6 BY MR. GOODMAN:

7 Q Now that we are ready to go, good afternoon.

8 A Good afternoon.

9 Q Would you speak into the mic so that it will be
10 easier for everyone to hear? Again, for the record,
11 just state your full name.

12 A Valerie Ann Colbert-Osamuede.

13 MR. GOODMAN: I just want members of
14 Council to correct one thing that was stated for the
15 record; that the interests of City Council are
16 adverse to those of the City of Detroit in the
17 Freedom of Information Act request.

18 There can be, I suppose, different and
19 varying opinions and judgments on that issue. We --
20 well, City Council was allowed to intervene in that
21 case based upon the finding of Judge Colombo that the
22 representation of City Council had been inadequate up
23 until that point. And in my view, the interests and
24 actions of City Council in that particular litigation
25 are not adverse to those of the City of Detroit.

1 They may be adverse to those of the attorney who
2 represent -- claims to represent the City of Detroit,
3 and in fact, represents the City Law Department, and
4 -- and I would just like to clarify that for the
5 record.

6 MR. CAMPBELL: If I may, Mr. Goodman.
7 (Inaudible) do not doubt -- I assume is that the City
8 Law Department has taken the position that it is
9 adverse in previous proceedings before this august
10 body, and that my client as an employee of the Law
11 Department is not -- should not be -- comment or
12 question that particular legal strategy designed,
13 whether successful or not, by the Law Department.

14 MR. GOODMAN: Well -- okay; I don't
15 want -- I don't want to quibble about semantics, and
16 I don't intend to spend personally any time on that
17 litigation -- the members may. I just wanted it
18 clear that we do not accept your characterization of
19 our position in that litigation.

20 MR. CAMPBELL: Thank you. So you
21 understand, it's not my characterization. It is the
22 characterization of the Law Department in the
23 proceedings before Judge Colombo, and therefore, it
24 governs my findings as a lawyer in these proceedings.

25 MR. GOODMAN: Okay.

1 BY MR. GOODMAN:

2 Q We have now -- Ms. Colbert-Osamuede, we have now had
3 a detailed description of the events leading up to
4 the settlement of the Brown, Nelthrope, and Harris
5 cases by three highly experienced lawyers, so I don't
6 want to spend a great deal of time on that, even
7 though I'm going to address some of those issues and
8 your brief concluding remarks. But I do want to take
9 us up to -- I want to just sketch your role in that
10 litigation. First of all, you're a member of the
11 State Bar of Michigan; is that correct?

12 A Yes, I am.

13 Q How long have you been practicing law?

14 A I was barred in 1989. I've been practicing law for
15 approximately 19 years.

16 Q Do you specialize in a particular area of law?

17 A Labor and employment litigation.

18 Q How long have you been employed by the City of
19 Detroit?

20 A Seventeen years in August.

21 Q And what is your current position within the City Law
22 Department?

23 A I am a chief assistant corporation counsel.

24 Q In that capacity, did you participate in the
25 Brown/Nelthrope -- the Brown and Nelthrope case?

1 A Yes, I did.

2 Q What was your role in that case?

3 A Initially, the case was assigned to a subordinate
4 lawyer in my division by the name of Shannon Holmes.
5 I was a signatory on the -- well, co-counsel to her
6 initially. When she left the Law Department, I
7 became the lead counsel, but I have always been the
8 counsel on that litigation since its inception.

9 Q At some point, and I think we've heard -- who was
10 your client in the context of that litigation?

11 A When?

12 Q Initially and throughout the -- throughout the period
13 of litigation, and if your client changed, you can
14 indicate that it did and when that happened.

15 A When the lawsuit was first filed, we immediately --
16 the City of Detroit Law Department, filed a motion in
17 lieu of answer. And specifically -- well, I
18 shouldn't say specifically, but for lay purposes that
19 would be like a motion to dismiss, based on the
20 pleading. At that time, the City of Detroit was a
21 Defendant, Mayor Kwame Kilpatrick was a Defendant,
22 Jerry Oliver was a Defendant. Those were the City's
23 defendants. Also, Mr. Robert Berg was a Defendant,
24 but he was represented by his own private attorney.

25 Q And at some point both Mr. McCargo, whom you heard

1 testify this morning, and Mr. Wilson Copeland joined
2 the trial, the Defendant team; is that right?

3 A That is correct.

4 Q Mr. McCargo on behalf of the Mayor; is that right?

5 A That's correct.

6 Q And Mr. Copeland on behalf of the City of Detroit; is
7 that right?

8 A That's correct.

9 Q Now, that happened at the same point in time; am I
10 right about that?

11 A In June of 2004, our motion in lieu of answer was not
12 granted, after some substantial discovery. Certain
13 protective orders were absolved and dissolved. The
14 decision was made then that there needed to be
15 separate counsel for each of the defendants. That
16 included the Mayor, Jerry Oliver, and co-counsel for
17 the City of Detroit.

18 Q And at that point you were, in turn, from the Law
19 Department the representative of the Defendants in
20 the action; is that correct?

21 A I was the Law Department who -- the Law Department
22 attorney who represented the City of Detroit, and I
23 always considered myself representing the City of
24 Detroit.

25 Q Did you also have an appearance in that case on

1 behalf of Mayor Kilpatrick as well?

2 A Initially, I had an appearance and I didn't withdraw
3 that appearance. I probably should have, but I
4 considered myself the City of Detroit's lawyer.

5 Q In that regard, who -- who did you report to in order
6 to consult with your client and obtain direction from
7 your client for purposes of moving forward with that
8 litigation?

9 A If I understand your question, I was reporting to the
10 Corporation Counsel in discussing litigation matters
11 revolving around the case.

12 Q Let me put it this way; whenever we have -- whenever
13 we represent clients in any case and in court, there
14 are times when -- many times during the course of
15 this litigation that we will find it necessary to
16 consult with our client in order to get direction.
17 You agree with that, right?

18 A Yes.

19 Q For your purposes to the degree that you considered
20 yourself the attorney on behalf of the City of
21 Detroit, the individual with whom you would consult
22 with was Mr. Johnson; is that correct?

23 A No. Mr. Johnson was not the corporation counsel at
24 that time.

25 Q Well -- Mr. Johnson was corporation counsel, then

1 Ruth Carter; is that correct?

2 A Yes. But my direct report at that time was the
3 deputy director, who would have been Brenda Braceful,
4 and that would have been the person that I would have
5 dialogued with most consistently regarding the
6 litigation and proper strategy regarding the
7 litigation as it relates to the City of Detroit.

8 Q What about the settlement; who did you talk to with
9 regards to the settlement -- the possibility to
10 settle the case?

11 A My direct report, who would have been the deputy
12 corporation counsel.

13 Q Which would have been Brenda Braceful; is that
14 correct?

15 A That is correct.

16 Q When did Brenda Braceful leave the Law Department?

17 A Sometime last year. I want to say August, but I
18 think just before we began trying the case.

19 Q And after that, who did you consult with directly in
20 terms of seeking guidance and advice on behalf of
21 your client within the Law Department?

22 A The Corporation Counsel, Mr. Johnson.

23 Q Mr. Johnson. You also represented the City of
24 Detroit in connection with the Walter Harris case; is
25 that correct?

1 A That's correct.

2 Q And who was your client in that litigation?

3 A I represented the Mayor, the City of Detroit, and
4 Jerry Oliver.

5 Q What -- could you briefly sketch the history of
6 settlement negotiations in the Brown/Nelthrope case,
7 up until the time of trial?

8 A Well, the case was first filed sometime in -- I want
9 to say November of '03. Judge Tertzag was the judge
10 who was assigned the case and ordered us to
11 facilitation. At that time, we chose Valdemar
12 Washington -- Val Washington, who ultimately became
13 our facilitator in October of 2007. At that time, I
14 had discussions with my direct report and at the
15 facilitation, I was prepared to -- we were prepared
16 to offer approximately \$250,000.00 to each Defendant
17 --

18 Q Each party?

19 A Each party, each party. And primarily, we wanted to
20 do it by way of a structured settlement and we were
21 prepared to discussion certain pension augmentations
22 if we could. But the Plaintiffs came to the
23 facilitation with the demand of eleven million
24 dollars, and we spent a great portion of the day
25 spinning our wheels. They would not move out of the

1 eleven million dollar facilitation amount, and the --
2 the facilitator at that time, Mr. Washington, came to
3 the Defendants, because Mr. Berg was also part of
4 this facilitation, and indicated they wouldn't no-
5 cause him out of the case or not agree to settle him
6 out of the case. But at some point in time, the
7 facilitator indicated that, "We are not going to get
8 anywhere. They are not going to get off their eleven
9 million dollars, and I don't see that this
10 facilitation is going to be through."

11 Q That was when?

12 A That was, I believe, November of 2003. Shortly
13 thereafter, the case continued to progress in
14 discovery. I do not believe the next time that we
15 had any discussions regarding settlement, I believe
16 that occurred around mediation or case evaluation. I
17 cannot give you the date sitting here today when the
18 case evaluation took place.

19 Q Mr. Stefani testified the case evaluation resulted in
20 overall evaluation for both cases of 2.2 million --
21 \$2,350,000.00; is that correct?

22 A That's my understanding and my belief, yes.

23 Q Did the City ever make any attempts to use that
24 number as a basis upon which to settle the case;
25 either the City or any of the other Defendants?

1 A There was discussion from me to my superior. I don't
2 know where it went beyond that as it relates to the
3 mediation amounts. Ultimately, we rejected the
4 mediation amount, as did the Plaintiffs. The case
5 continued to go through discovery and at some point,
6 the co-counsels came in and don't I believe the next
7 time we talked about settlement was until the case
8 had come back from the Court of Appeals and it was
9 postured to go to the Michigan Supreme Court.

10 Q At some point Mr. Stefani wrote a letter and
11 suggested that his demand was \$4.3 million dollars
12 for both cases; is that correct?

13 A That is my understanding?

14 Q Did you ever see the letter?

15 A I recall seeing a letter. I remember the amount of
16 \$4.3 million dollars. I believe a letter was written
17 to Mr. Morley Witus, if I'm not mistaken.

18 Q I think you're absolutely right. It is in the packet
19 of materials that you have there before you. It's in
20 the blue volume there, and I think it's under tab
21 number one.

22 MR. GOODMAN: Mr. Campbell?

23 MR. CAMPBELL: I have it. Thank you.

24 BY MR. GOODMAN:

25 Q Now, Ms. Colbert-Osamuede, I know that as someone

1 whose practice -- who has been a trial lawyer for
2 many years, when an offer is made by a plaintiff, the
3 plaintiff assumes -- the defendant assumes that the
4 plaintiff will come down off that offer, and when a
5 demand -- excuse me -- when an offer is made by a
6 defendant, all the parties understand that that offer
7 may go up. When the demand is made by a plaintiff,
8 all the parties understand that the demand can go
9 down. Did you have any such understanding with
10 regard to this \$4.3 million dollars?

11 A I did believe that it would go down.

12 Q Did you ever have -- were there any -- ever any
13 attempts to explore with Mr. Stefani the possibility
14 of settling this case for a number lower than that
15 particular demand?

16 A If my memory serves me correctly, I believe Mr. Witus
17 continued to have informal discussions with Mr.
18 Stefani. I will tell you -- I've been asked this
19 question and I'm going to compare this. At the same
20 time, I contacted Mr. Stefani about the Walter Harris
21 case, because in my mind, if you want to settle Brown
22 and Nelthrope, you needed to settle Walter Harris.
23 And he and I engaged in some preliminary discussions
24 in March of '07 about the Walter Harris case and
25 settlement of that matter.

1 Q And we've been told that his demand was then \$1.9
2 million dollars for the Harris case?

3 A Well, that didn't come until later, after the trial
4 of Brown and Nelthrope, several, several months
5 later. At that particular time, I was of the belief
6 that Mr. Stefani wanted all three cases to settle as
7 well, and --

8 Q At what time?

9 A In March of '07.

10 Q Yes.

11 A And so, it made sense to me that all of the cases
12 would settle at the same time. When Brown and
13 Nelthrope did not settle in March of '07, neither did
14 Walter Harris.

15 Q Just for the moment, what was his demand in Harris at
16 that time?

17 A If I'm not mistaken, Mr. Stefani and I had verbal
18 conversations back and forth. He later wrote me a
19 formal demand in September of '07, but we were
20 talking about -- I was talking \$250,000.00. He never
21 gave me a figure that I recall at that time. What he
22 told me what he would do, but he never got an
23 opportunity to do because of the development in the
24 Brown and Nelthrope case, I can only assume, was he
25 was going to provide me an outline of what he

1 believed Mr. Harris's damages were at that time, and
2 he did not get a chance to do that, and did it in
3 September of 2007.

4 Q Okay. And at that time, he demanded, I think you
5 indicated or have stated it was \$1.9 million dollars;
6 is that right?

7 A It was -- one point -- I went back and look -- found
8 the letter; it was \$1.7299 million dollars, and he in
9 that letter stated that if I were to settle the
10 matter, because that letter was dated September 25th,
11 2007. If I were to settle the matter, the City, by
12 October 25th, 2007, he would take \$600,000.00 to
13 settle the case.

14 COUNCIL PRESIDENT PRO TEM CONYERS:

15 Could you repeat that, Mr. President?

16 COUNCIL PRESIDENT COCKREL: Yes.

17 Could you repeat that -- repeat that last statement?

18 THE WITNESS: In September of 2007,
19 Mr. Stefani sent me a letter and he -- his demand --
20 his outline of damages were approximately \$1.7299. I
21 know in the memo I said \$1.9, but I was mistaken on
22 that. I went back and found the letter, and he --

23 MR. CAMPBELL: Which memo are you --

24 MR. GOODMAN: This is the memo that's
25 called the lawsuit settlement memo?

1 THE WITNESS: The lawsuit settlement
2 memo.

3 MR. GOODMAN: And Mr. Campbell, for
4 your benefit, it is, I think, found under tab four.
5 In the spiral under tab four.

6 MR. CAMPBELL: Thank you.

7 MR. GOODMAN: Mm-hmm.

8 THE WITNESS: To continue to answer
9 your question; he made a demand or outlined damages
10 of \$1.72 million dollars plus -- 7299, and in that
11 letter of September 25th, 2007, he told me that he
12 would take \$600,000.00 to settle the claim, if I
13 settled the claim by October 25th, 2007.

14 BY MR. GOODMAN:

15 Q So he was thinking in the manner of \$600,000.00?

16 A That's correct.

17 Q And that demand was made, I think you said, on
18 September 25th?

19 A 2007, correct.

20 Q Did you take that demand to anybody and make any
21 recommendations, or receive any recommendations or
22 make any recommendations in connection with it?

23 A There was always discussion about the demand. I
24 thought the demand was fair, and at that point in
25 time, as you know, we had concluded the

1 Brown/Nelthrope matter and we worked in facilitation.
2 And at that point in time the case was settled for
3 \$400,000.00.

4 Q And I assume since he had demanded \$600,000.00, you
5 thought there was a possibility that he would go
6 below his written demand and accept something less
7 than 600?

8 A I was under the impression that the case could
9 settle, based on his letter, between four and five
10 hundred thousand dollars.

11 Q Thank you. Now, let's go to that point in time. You
12 went through the trial which took place and ended on
13 September the 11th, 2007 in a \$6.5 million dollar
14 verdict on behalf to the Plaintiffs Brown and
15 Nelthrope; is that correct?

16 A That's correct.

17 Q And then we've all heard a description of this
18 meeting, that this facilitation had taken place in
19 the Charfoos and Christensen law office on Woodward
20 Avenue on October 17th, 2007, and you were present
21 for that; is that correct?

22 A That's correct.

23 Q Again, just to shorten this, because it has been a
24 long day and there is another witness, as you all
25 know, after you today. At some point -- well, I'll

1 withdraw that. All that was being facilitated or
2 discussed or negotiated was Mr. Stefani's current
3 demand, up until a certain point in the negotiations;
4 is that correct?

5 A That's correct.

6 Q At some point, however, he indicated an interest in
7 what he called a global settlement, correct?

8 A That's correct.

9 Q Did you understand that that global settlement would
10 be for Brown and Nelthrope only, or for Brown,
11 Nelthrope, and Harris as well?

12 A For Brown and Nelthrope only.

13 Q And that would include the settlement or the verdict
14 of the \$6.5 million dollar verdict, as well as his
15 demand for attorney fees, as well as any interests
16 that he may deem himself entitled -- or his firm was
17 entitled to, correct?

18 A And release of the appellate rights; that's correct.

19 Q So a full complete release of all --

20 A That's correct.

21 Q -- litigation interests?

22 A That's correct.

23 Q Well, when he proposed this, he proposed it to the
24 facilitator, Judge Val Washington; is that right?

25 A That's correct.

1 Q And what was the response to Judge Washington when he
2 told you finally that Stefani was interested in
3 negotiating a global settlement?

4 A Well, the discussion while Mr. Washington was present
5 was that we had come in with the authority to settle
6 or attempt to settle the attorney fees, and that we
7 did not have authority to settle the entire matter.
8 He took that back to Mr. Stefani and while in the
9 room -- when I say the room, the defense room I would
10 call it, Mr. McCargo and Mr. Copeland asked me had I
11 had any experience before in settling matters in the
12 way in which provided by Mr. Stefani. My response
13 was yes.

14 Q That would have been in the Alvin Bowman (ph) case,
15 correct?

16 A That is correct.

17 Q Do you just want to tell the members of Council
18 briefly what the Alvin Bowman case was?

19 A The Alvin Bowman case was another whistleblower case
20 out of the Detroit Police Department and through
21 proof on discovery -- the Mayor had been sued; the
22 chief of police had been sued; and the City of
23 Detroit had been sued, and I believe Ms. Beatty had
24 been sued. Through motions, the Mayor and Ms. Beatty
25 were dismissed out of that case, leaving just the

1 City and the chief of police. It went to trial on
2 that matter. A verdict was rendered of \$200,000.00.
3 We were in front of Judge Michael Callahan and it's
4 his practice, I believe just in whistleblower cases,
5 because I had other cases with Judge Callahan, he
6 sent us to facilitation over the attorney fees.
7 After a lot of back and forth, and discussion and
8 discount, some discount of his attorney fees, Mr.
9 Stefani sent a note through Mr. Washington again, who
10 was our facilitator, and indicated that he wanted to
11 settle everything, attorney fees, interests, and
12 resolve the matter so we would not have to go -- or
13 the case would not be appealed. At that time, I made
14 several phone calls to ascertain whether I could, in
15 fact, enter into those kinds of discussions. And
16 once I had received the go-ahead to go ahead and
17 settle the matter, we did, in fact, work out a
18 settlement for Mr. Bowman.

19 Q So let's fast forward to October 17th and the
20 question was asked, "Have you ever done this before?"
21 and you told them both about this prior experience
22 you had, correct?

23 A That's correct.

24 Q And then what was their response to that?

25 A Their response was, "Is it worth it here to try and

1 discuss it?" and I said, "It's always worth" -- you
2 know, we all agreed that it's always worth trying to
3 settle something, especially when we had an amount
4 with interest of \$7.9 million dollars. And I made
5 the overture that I was going to let me make the
6 first phone call to see what could, in fact, happen
7 in this case. Before that happened, Mr. McCargo was
8 pulled away from the group by Mr. Washington.

9 Q And where was Mr. McCargo pulled?

10 A Out of the room and into the parking lot.

11 Q And do you know -- well, did you know that he'd been
12 handed a motion that Mr. Stefani had given to Judge
13 Washington and asked -- that Judge Washington
14 instructed Mr. McCargo to read the motion; did you
15 know that at the time?

16 A No, I did not.

17 Q Did you learn that?

18 A No, I did not.

19 Q That that's what happened, that Mr. -- that he'd been
20 given this motion and asked to read it?

21 A I didn't learn of any motion.

22 Q Or brief?

23 A Or brief until far after the facilitation. That day
24 I did not know that Mr. McCargo had been handed a
25 motion or brief that applied in these proceedings.

1 Q You had been on the verge of making a telephone call
2 to see whether to open these discussions up to global
3 settlement discussions; is that correct?
4 A That's correct.
5 Q And did you make that call while Mr. McCargo was out
6 in the parking lot reading whatever it was that he
7 was reading?
8 A I don't know what Mr. McCargo was doing in the
9 parking lot, but I did not finish that phone call at
10 that time.
11 Q Did you start the phone call; did you call anyone?
12 A I did not.
13 Q And the reason was?
14 A I was waiting for the team to reassemble, and at that
15 point in time, the call would have been made.
16 Q Did you ever instruct Judge Washington, you know, and
17 just tell Mr. Stefani to hold on, we are considering
18 asking for authority to open negotiations beyond just
19 the attorney fees?
20 A The next time I saw Judge Washington when he asked
21 Mr. McCargo to step out of the room, and I didn't see
22 Mr. Washington again until I stepped out of the room.
23 Q Now, you have no idea why -- why Washington had
24 pulled McCargo out of the room; is that what you're
25 saying?

1 A That's correct.

2 Q When you told Judge Washington previously that you
3 had no authority to settle the case at that time, did
4 you know that he went back and reported that they
5 said they had no authority to settle the case?

6 A I could only assume that that's what he was going to
7 do.

8 Q Were you concerned that that would then cause things
9 to break down, and that Stefani would leave, and
10 notwithstanding the fact that you have some interest
11 in continuing the negotiations; was that a concern
12 that you had?

13 A No, because oftentimes in facilitations you may be at
14 a point where one party may think that, you know, all
15 hope is lost. I'm using that as a colloquialism, but
16 in fact, you can resurrect discussions; that has
17 happened before.

18 Q But it couldn't have happened if Stefani, for
19 example, had left, and from his perspective, there
20 was no reason to sit there if there wasn't anything
21 more to discuss; is that correct?

22 A I don't know what he thought at the time.

23 Q And Mr. Washington, do you know where he was located
24 or how to reach him if you wanted to talk to him at
25 all?

1 A No, I did not know where Mr. Washington was, but I
2 assumed we could find him with --
3 Q Knock on the door and find him?
4 A Find him, yes.
5 Q Nonetheless, you waited until some point in time when
6 you reencountered Mr. McCargo; is that correct?
7 A I left out of the room. Mr. Copeland left first.
8 Some time passed, and then I followed Mr. Copeland
9 out of the room to see where the two -- where Mr.
10 McCargo was and where Mr. Copeland was.
11 Q How long was it before Mr. Copeland left the room?
12 A I'd say Mr. Copeland was probably in the room 20
13 minutes or so before he got up. Twenty or 25 minutes
14 before he got up to go see where Mr. McCargo was.
15 Q Then when you went out, just briefly explain what
16 transpired. What happened at that point?
17 A I went out to the parking lot and Mr. McCargo and Mr.
18 Copeland were talking. I approached them and asked,
19 "What's going on?" And Mr. McCargo said to me, "They
20 claim to have the text messages and they also want to
21 settle Harris, along with Brown and Nelthrope."
22 Q And what was your response?
23 A My response was, "I need to make some phone calls."
24 They wanted to settle Brown and Nelthrope; they want
25 to settle Harris, and they have the text messages --

1 and they have the text messages. I want to make some
2 phone calls. And at that point in time, I called Mr.
3 Johnson.

4 Q So when you say phone calls, you meant a call?

5 A A call, yes.

6 Q To Mr. Johnson?

7 A A phone call. One phone call to Mr. Johnson.

8 Q Did Mr. McCargo make any phone calls from what you
9 could observe?

10 A I don't know what he was doing. I stepped away to
11 talk to Mr. Johnson on the phone. I did get Mr.
12 Johnson and I did tell him exactly what I just told
13 you. I came back. I reported to Mr. McCargo that I
14 had reached Mr. Johnson and asked Mr. Johnson to come
15 down to the facilitation to help settle this matter.
16 And Mr. McCargo, I believe, at that time left to make
17 a phone call.

18 Q So when you reached Mr. Johnson he was downtown here?

19 A In a meeting.

20 Q But here?

21 A But he was down in the downtown area.

22 Q Yes. So it required him traveling up to the New
23 Center area where this conference -- this meeting was
24 being held, right?

25 A Yes, at Charfoos and Christensen.

1 Q And how long did it take him to get there?

2 A It took awhile because he was in a meeting, and I had

3 to make another phone call to him to ask where he

4 was. At that point in time, he was en route,

5 probably around five minutes at the time that I made

6 the second phone call.

7 Q Now, when you called Mr. Johnson, did you tell him

8 that Stefani claimed to have the text messages?

9 A Yes, I did.

10 Q Did you -- and when Mr. McCargo told you that Stefani

11 claimed to have the text messages, did he tell you

12 what he believed may be in the text messages that

13 Stefani claimed to have?

14 A No, he did not.

15 Q Did he say anything about the fact that the text

16 messages disclosed a relationship between the Mayor

17 and Ms. Beatty?

18 A No, he did not.

19 Q Did anyone ask him that?

20 A No. I didn't have anything to base asking that on.

21 I didn't know that there was something that disclosed

22 that. When he said they had the text messages or

23 claimed to have the text messages, because he hadn't

24 seen them and I certainly hadn't seen them, it was my

25 belief that it was the text messages that we had for

1 2004 sought -- or at least Mr. McCargo sought to have
2 a subpoena quashed, but ultimately the messages were
3 ordered to go to Judge Callahan.

4 Q And did you understand what was contained in those
5 text messages?

6 A I had never seen the text messages, so I cannot tell
7 you what was actually in the text messages. But I
8 did have an understanding that the text messages
9 involved discussions regarding governmental affairs,
10 governmental policies, and also that there may be
11 some embarrassing texts as it relates to members of
12 the public at large or businesspeople.

13 Q Members of Council?

14 A Members of Council, legislative branch -- the
15 legislative branch and businesspeople. It was my
16 understanding that there could be very harmful
17 messages that could certainly harm the relationship
18 between the executives or legislative branch, as well
19 as entities outside of the City of Detroit that had
20 interests with the City of Detroit.

21 Q And how did you come to that understanding?

22 A I learned that in '04.

23 Q Through who?

24 A Through my direct report.

25 Q Your direct report being your?

1 A The Corporation Counsel office, yes.

2 Q And this is information that came through the office.

3 So this information came from who in your office, Ms.

4 Osamuede?

5 A Corporation counsel at the time, as well as the

6 deputy corporation counsel.

7 Q That would be Ruth Carter and Brenda Braceful, right?

8 A That's correct.

9 Q And had they -- did they tell you that they had seen

10 these text messages?

11 A They had not seen the text messages, but they had had

12 discussions about the text messages.

13 Q And I take it those discussions were with Mr. -- were

14 with Ms. Beatty, the Mayor, or both; is that correct?

15 A I don't know who they had discussions with.

16 Q So you came to an opinion as to what the contents of

17 these text messages was, based upon your reports from

18 people who work in your office who had not seen the

19 text messages; is that correct?

20 MR. CAMPBELL: When you say through

21 reports, the people to whom she reported to, from her

22 superiors.

23 MR. GOODMAN: Reports from her

24 superiors?

25 MR. CAMPBELL: Correct.

1 MR. GOODMAN: I'll use that term.

2 BY MR. GOODMAN:

3 Q Continue.

4 A I learned that, and I also -- on the basis of

5 information obtained by Mr. McCargo for the basis of

6 filing the initial motion in 2004.

7 Q And you understand that Mr. McCargo as well had not

8 seen the text messages?

9 A That is correct.

10 Q And Mr. McCargo objected to these being turned over,

11 based upon what he called the deliberative process

12 privilege; is that correct?

13 A That is correct.

14 Q Which is the privilege asserted by governmental

15 agencies that do not wish their thoughts and

16 discussions in deliberation of policies to be

17 publicly disclosed; you understand that, is that

18 right?

19 A It's my understanding that actual factual matters can

20 probably be disclosed, but the opinions in

21 deliberations cannot be.

22 Q And whether the text messages were part of the actual

23 factual matter, for example, meetings, encounters

24 between two parties involved, or any of those kinds

25 of things, you have no idea. Ms. Carter had no idea

1 -- Judge Carter, I should say. Ms. Braceful had no
2 idea, and Mr. McCargo had no idea, because none of
3 them had seen the messages; is that a fair statement?

4 MR. CAMPBELL: Just a moment.

5 THE WITNESS: Could you repeat your
6 question, please?

7 MR. GOODMAN: Ordinarily the court
8 reporter will read it back, but I'll try.

9 BY MR. GOODMAN:

10 Q My question is this. There may have been some facts
11 in those text messages, such as, "We had a meeting
12 last night. We were together yesterday. We embraced
13 three days ago." Any of those types of things, or,
14 "We decided to fire Deputy Chief Brown four days
15 before he claimed to have an anonymous letter," or
16 any of those possibilities, and all those things
17 might have been reported in the text messages. You
18 had never seen them. You didn't know; neither did
19 Ms. Braceful; neither did Judge Carter; neither did
20 Mr. McCargo. Is that a fair statement?

21 A That is a fair statement.

22 Q Thank you. Now, I guess where we were that you had
23 called Mr. Johnson. Did you tell him -- and if I
24 asked this already, I apologize. I got distracted
25 just for a moment. Did you tell him that Stefani

1 claimed to have the text messages?

2 A Yes.

3 Q Did he ask you anything more about it?

4 A No, he did not.

5 Q Did he ask to talk to Mr. McCargo?

6 A No, he did not.

7 Q When -- withdraw that. Did you commence negotiations

8 at that point or at some point with Mr. Stefani using

9 Judge Washington as a shuttle device to carry

10 messages back and forth?

11 A Not until Mr. Johnson arrived.

12 Q After Mr. Johnson arrived, did you do that?

13 A We began discussing settlement amounts.

14 Q And was an agreement worked out?

15 A Yes.

16 Q And did that occur at the Charfoos and Christensen

17 office, the working on that agreement?

18 A That aspect, yes.

19 Q There were other aspects as well that were worked out

20 at that time; is that correct?

21 A We didn't discuss any other aspects, other than the

22 settlement of the Brown/Nelthrope/Harris case.

23 Q And then you adjourned to Mr. Stefani's office?

24 MR. CAMPBELL: If I may get some

25 clarification; the question was whether or not there

1 were -- whether the other matters were discussed at
2 the Charfoos office, and you said you didn't discuss
3 anything other than the settlement.

4 MR. GOODMAN: The money.

5 MR. CAMPBELL: Was it just the money
6 that was discussed?

7 THE WITNESS: I thought I said just
8 the monetary.

9 MR. GOODMAN: I thought that was what
10 you said as well.

11 BY MR. GOODMAN:

12 Q And then you adjourned to Mr. Stefani's office in
13 Royal Oak; am I right?

14 A That's correct.

15 Q And there you negotiated the balance of what turned
16 into the document entitled Settlement Agreement and
17 found under tab three in this book.

18 A Tab three was, to my recollection, already prepared
19 when we finally retired into Mr. Stefani's conference
20 room.

21 Q I'm going to hand you what has been marked Stefani
22 handwritten notes.

23 MR. GOODMAN: Do you have a copy of
24 that?

25 MR. CAMPBELL: Yes, I do.

1 BY MR. GOODMAN:

2 Q Take a look at that and tell me have you ever seen
3 that before?

4 MR. CAMPBELL: When you say -- do you
5 mean October 17th?

6 MR. GOODMAN: That's a good place to
7 start.

8 THE WITNESS: Without the cover it's
9 eight pages, and --

10 BY MR. GOODMAN:

11 Q Actually, it's a series of notes. I'm actually
12 referencing in particular the third page of those
13 notes that's titled at the top, quote, "Settlement
14 Agreement," end quote.

15 A I don't recall seeing these handwritten documents or
16 notes.

17 Q Did you see any handwritten notes or documents?

18 A I recall only seeing the -- the notepad that we were
19 shuttling back and forth with the numbers. That's
20 the only thing that I remember being handwritten.

21 Q Now, at the time that you got to Mr. Stefani's
22 office, you said this typed agreement, which is in
23 the spiral book in front of you, that had already
24 been prepared; is that right?

25 A That's correct. Mr. Stefani indicated to us when we

1 were leaving Charfoos and Christensen, that he would
2 go back to his office and type up an agreement, and
3 could we give him an hour. We agreed to meet him at
4 approximately 6:30, and give or take a few minutes,
5 Mr. McCargo and I arrived at approximately the same
6 time. Mr. Copeland came later, and I would say that
7 by the time that all three of us had made it to the
8 office and we went into the conference room, it was
9 approximately 7:00 o'clock. And Mr. Stefani had
10 presented us with this typewritten formal agreement
11 that's under tab three.

12 Q Okay. And going through this briefly, take a look at
13 that if you will, paragraph one refers to a transfer
14 of ownership of the text messages and some documents.
15 Paragraph two refers to a supplemental brief for
16 attorney fees, and that's in quotations. Paragraph
17 three refers to Stefani -- Stefani having its
18 employees enter into a non-disclosure agreement with
19 regard to this information, and that paragraph has
20 five subparagraphs. Paragraph four refers to
21 dismissal and release clause in the Nelthrope and
22 Harris cases, and Brown case. Excuse me. Paragraph
23 five has monetary terms in it. Paragraph six also
24 does. Paragraph seven talks about mutual releases
25 that involve Christine Beatty. Paragraph eight has

1 dates for future, what Mr. McCargo referred to as
2 opt-in requirements. Is that a fair rundown of that
3 document?
4 A Yes, it is.
5 Q So half of this document, perhaps more, involves
6 confidentiality provisions that were agreed upon on
7 October the 17th; is that a fair statement?
8 A Yes, confidentiality agreements or provisions in this
9 document.
10 Q And they constitute a substantial portion of the
11 document; would you agree?
12 A Yes.
13 Q Now, was there any understanding of how this matter
14 was to be then cycled through the Detroit City
15 Council?
16 A No. Not at that time, no.
17 Q Did you have any discussions with Mr. Johnson about
18 it?
19 A When?
20 Q That night.
21 A No.
22 Q Did you ever learn --
23 A I'm sorry; that's not correct.
24 Q Go ahead.
25 A When we were leaving Charfoos and Christensen, Mr.

1 Johnson and I were walking back to our cars. Mr.
2 Johnson made a phone call to Council Member Kenyatta.
3 And at that time, he said --

4 MR. CAMPBELL: He said, who said?

5 THE WITNESS: He, Mr. Johnson,
6 indicated to the Council Member, "We've settled the
7 matter." While still on the phone, Mr. Johnson said,
8 "Mr. Kenyatta would like for me to have the
9 settlement agreement written up, or the settlement
10 memo to Council written up by 9:00 o'clock the next
11 morning." I said, "Well, I don't think I can get it
12 there by nine," but my goal was to get it done
13 between ten and eleven. So when Mr. McCargo -- or
14 Mr. Johnson -- Mr. Johnson did not accompany us to
15 Mr. Stefani's office. I knew that once I left there,
16 in the morning, I was going to prepare the settlement
17 memo to the Internal Ops Committee.

18 BY MR. GOODMAN:

19 Q And you overheard the conversation, or at least Mr.
20 Johnson's end of the conversation?

21 A That's correct.

22 Q Between himself and Member Kenyatta; is that right?

23 A That's correct.

24 Q Did you hear Mr. Johnson say, "I would like this
25 approved by your committee as quickly as possible?"

1 A No, I did not.

2 Q Did you hear him say, "I would like this approved by
3 your committee tomorrow?"

4 A No, I did not.

5 Q You then prepared a Lawsuit Settlement Memorandum; am
6 I right?

7 A That's correct.

8 Q I want to go on now to tab five. This is the notice
9 of rejection; do you see that?

10 A Yes.

11 Q Have you seen that before?

12 A Yes, I have.

13 Q When did you see it?

14 A On December 5th, 2007.

15 Q So you saw it in the context of the settlement; is
16 that right?

17 A I saw it on December 5th, 2007 when we were closing
18 and signing the two settlement agreements for Brown,
19 Nelthrope, and Harris.

20 Q And where was that?

21 A Where was that shown? In Mr. Copeland's office.

22 Q And why was it -- why, to your understanding, were
23 there now two settlement agreements, or two
24 agreements?

25 A There were always two agreements in my mind; it was

1 not surprising.

2 Q And why do you say that?

3 A Two different matters, two different settlement
4 agreements.

5 Q Brown and Nelthrope on the one hand, and Harris on
6 the other?

7 A That's correct.

8 Q What about were you aware of a confidentiality
9 agreement being entered into?

10 A No.

11 Q There were confidentiality provisions in the original
12 document entitled Settlement Agreement from October
13 17th; is that right?

14 A That's right.

15 Q Those were eliminated from the second agreement that
16 was proposed on December the 5th; is that right?

17 A That's right.

18 Q Did you ever inquire what happened to those
19 provisions?

20 A To me, the main thing about confidentiality are two
21 things, the settlement amount. I really do not like
22 to have the settlement amount out public. I know
23 that it's going to be published in the general City
24 Council, and I know that in that sense it is public.
25 And generally in my confidentiality agreements, there

1 is a -- there is a notation that that is not
2 considered a breach. However, before I left the
3 Internal Operations Committee, the \$8.4 million
4 dollars was already in the press, so the need to not
5 disclose unduly the amount of money was no longer an
6 issue to me, because it was already out in the
7 public. In terms of the records, my notion or my
8 consideration was getting it out of the hands of Mr.
9 Stefani. I left the other aspects of how that was
10 done and how it was going to be accomplished to the
11 other attorneys.

12 Q My question was whether you ever asked for a copy of
13 the confidentiality provisions.

14 A No, I did not.

15 Q And had anyone ever told you that there was another
16 separate agreement?

17 A No one ever told me that.

18 Q Would it surprise you to learn there was another
19 separate agreement?

20 A It would not surprise me.

21 MR. CAMPBELL: Let's take that out of
22 the hypothetical. There was another agreement. Do
23 you want to ask if she was surprised when she learned
24 it?

25 MR. GOODMAN: Yes. That's a fair

1 recapitulation of the question.

2 BY MR. GOODMAN:

3 Q When you learned that there was another
4 confidentiality agreement, were you surprised?

5 A Yes. I did not know that there was a confidentiality
6 agreement, another one, in terms of that had been
7 executed. If I may continue, I first knew through
8 Mr. Stefani's deposition that the Confidentiality
9 Agreement was in an envelope or a manila folder the
10 day that we signed the Settlement Agreement, and he
11 was passing that document to me in a manila folder,
12 and Mr. McCargo directed him to stop. "Ms. Colbert
13 is not a party of that. Mr. Copeland is not a party
14 to that. That comes to me." I said, "Fine," but I
15 did not know what was in that manila folder.

16 Q Did you ever ask?

17 A No, I did not ask.

18 Q I have here -- I have another copy.

19 MR. GOODMAN: Mr. President, I have
20 some copies of an e-mail chain here, and I don't know
21 if there are enough, so if Members could share, I
22 would appreciate it, and I apologize. I think we
23 have enough. Thank you.

24 BY MR. GOODMAN:

25 Q Have you had a chance to look at that?

1 A Yes, sir.

2 Q Okay. Now, apparently, on October 30th, Mr. McCargo
3 goes to Mr. Stefani and suggested that a certain
4 provision regarding notice was a part of the
5 Confidentiality Agreement only, and do you see that?

6 A Yes, I do.

7 Q And then there is a -- I don't know if this is a
8 follow-up e-mail from you, but you indicate that you
9 are not a party to this document, "Please direct any
10 e-mails or documents regarding same to Sam only." Is
11 that -- are you referring to the Confidentiality
12 Agreement there?

13 MR. CAMPBELL: Can I -- this is the
14 first time I've seen these documents. Am I correct
15 that these two documents attached here are separate
16 documents that are brought together to be attached?
17 I don't read these as being a chain of e-mails and I
18 wanted to clarify that. These are two independent
19 documents.

20 MR. GOODMAN: They may be, and I have
21 no -- I'm not claiming that they are necessarily
22 connected.

23 MR. CAMPBELL: They appear to be an e-
24 mail from Sam McCargo on page one.

25 MR. GOODMAN: Right.

1 MR. CAMPBELL: Dated October 30th,
2 2007 at 9:46 a.m., as you indicated about Stefani.
3 He did not cc items to Copeland or to my client.

4 MR. GOODMAN: That second document?

5 MR. CAMPBELL: Right. It appears
6 again, without being a chain, it first discusses --
7 it's sent from my client to individuals, including
8 Mr. McCargo, Mr. Stefani, and who I believe from the
9 e-mail address is Mr. Copeland. And it has a
10 different subject line from the first page, so again,
11 it doesn't appear to be -- it's a statement by my
12 client, "I'm not a party of this document. Please
13 direct any e-mails or documents regarding same to Sam
14 only," and it has the standard closure language on it
15 of my client's e-mails. Then there appears to be an
16 original e-mail to which that is a response that
17 appears to be sent by Mr. Stefani identifying Mr.
18 McCargo, my client, and Mr. Wilson saying, "Attached
19 is my language for the notification provision. I
20 have accepted the other modifications that we have
21 agreed to." I will indicate to you that I believe
22 there was an attachment to that e-mail from Mr.
23 Stefani, and that attachment is what is being
24 referred to by my client. It appears -- the reason
25 that I'm speaking is you're aware of the document in

1 terms of providing documentation. There is an e-mail
2 that intercedes Mr. Stefani and my client's e-mail
3 chain here, and that e-mail directs that this
4 document that Mr. Stefani had sent was sent
5 inadvertently to my client.

6 MR. GOODMAN: I'll put this into
7 context again and ask the witness for her answer, and
8 ask her to testify, unless you instruct her not to.

9 MR. CAMPBELL: Well, I will instruct
10 her not to answer unless you provide the basis.
11 Under the rules for professional conduct and case
12 law, this is something inadvertently produced.

13 MR. GOODMAN: We don't have a lot of
14 time, so you're just instructing her and maybe you
15 can give us a written explanation.

16 MR. CAMPBELL: I have to instruct her
17 at this time not to answer --

18 MR. GOODMAN: Fine.

19 MR. CAMPBELL: -- unless you can
20 relieve her of those obligations otherwise. You can
21 ask her if she saw the document at the time.

22 MR. GOODMAN: That's fine. But just
23 so -- so this record is clear, my interpretation of
24 this is there is an e-mail from McCargo to Stefani
25 referencing a notice provision in the Confidentiality

1 Agreement on the 30th. On the 31st, there is an e-
2 mail from Stefani -- excuse me -- from Stefani to Ms.
3 Colbert-Osamuede indicating that he had the language
4 for a notification provision, which apparently was a
5 part of the Confidentiality Agreement.

6 THE WITNESS: I'd like to speak to
7 those documents, if I may.

8 MR. GOODMAN: Well, your attorney has
9 instructed you --

10 THE WITNESS: I know.

11 MR. GOODMAN: Counsel, you should do
12 so after conferring with your --

13 THE WITNESS: I understand. I
14 understand.

15 MR. GOODMAN: Just confer. Go ahead.

16 THE WITNESS: I want it to be clear
17 that this top page of October 30th, 2007 from Sam
18 McCargo to Mr. Stefani or Mike, I did not see this.

19 MR. GOODMAN: Yes.

20 THE WITNESS: This is not cc'd to me.
21 As it relates to the second page, it looks like this
22 is from Wilson Copeland's e-mail. That looks like
23 something that Mr. Copeland produced.

24 MR. GOODMAN: I think that's right.

25 THE WITNESS: Okay. I know that there

1 was a subsequent. The chain of e-mails started with
2 Stefani. Then there was another e-mail from Mr.
3 McCargo that indicated though I was not a party to
4 this document, this needs to come back to you, and I
5 responded, "I'm not a party to this document. Please
6 send this to Sam," or as it states here, okay?

7 BY MR. GOODMAN:

8 Q Now, this document was what?

9 A I don't know which document it was. It was an
10 attachment, which I can't say sitting here today that
11 I opened at the time of this e-mail. I know that
12 when, as it says, that I'm not a party to it, I want
13 it immediately on the record that I'm not a party to
14 it.

15 Q Going to tab six in the spiral book, Mayor Kilpatrick
16 on November the 1st signed something called a Notice
17 of Approval of Terms and Conditions. Did you have --
18 did you see this at the time?

19 A At what time?

20 Q Well, on December the 5th, as you've stated
21 previously.

22 A It was provided to me on December 5th.

23 Q Did you have any idea at all as to why the Mayor had
24 on October 27th rejected the proposed settlement
25 terms, and then on November 1st approved proposed

1 settlement terms and conditions?

2 A I didn't draft the document, so I don't know. I can
3 only assume that he was concerned with the October 17
4 provision that he could reject or accept. But, I
5 cannot tell you why this document was written.

6 Q Were you ever told that the reason that the
7 Confidentiality Agreement -- I'll withdraw that
8 question. Were you ever told that there was an FOIA
9 request that was filed on October the 19th by the
10 Detroit Free Press, asking for all documents -- all
11 settlement documents in connection with the Brown and
12 Nelthrope matter?

13 A I'm sorry. Did you ask me was I ever told?

14 Q Did you ever learn?

15 A I learned that there was an FOIA request. I did know
16 if I learned on October 19th.

17 Q Were you aware or made aware of the fact that the
18 reason that the settlement was structured in the way
19 it was with one document relating to the monetary
20 terms and the second document relating to the
21 confidentiality terms was that the newspaper had
22 filed this Freedom of Information Act request?

23 A Absolutely not. I heard Mr. Stefani's testimony that
24 there was a meeting between myself, Mr. McCargo, Mr.
25 Stefani, and Wilson Copeland on or about November

1 1st. I want to make it clear on this record the last
2 time I saw Mr. Stefani was October 17th when I walked
3 out of his office at about 8:00 o'clock. The next
4 time I saw him was December 5th, 2007. I had no
5 meetings and no discussions with Mr. Stefani
6 regarding this case, except via e-mail.

7 Q And on December 5th there was no discussion that the
8 reason this had been divided into two separate
9 agreements had to do with a FOIA request?

10 A Absolutely not.

11 Q When were you made aware of the Free Press FOIA
12 request?

13 A I don't know.

14 Q Do you know who would have -- who it came to
15 originally within the Law Department?

16 A I don't know.

17 Q Do you have the Stefani handwritten notes before you,
18 Ms. Colbert-Osamuede?

19 MR. CAMPBELL: I believe I have them
20 here.

21 MR. GOODMAN: Thank you.

22 BY MR. GOODMAN:

23 Q In this hand printed draft, on the last page,
24 paragraph eight, the following language is found, "As
25 a condition precedent to this agreement becoming

1 operative, it must be approved by Mayor Kwame
2 Kilpatrick and the City Council of the City of
3 Detroit," and then "it" is crossed out and above it
4 is written, "The monetary terms of this settlement."
5 Do you see that?

6 A Yes, I do.

7 Q Do you remember any discussion regarding the change
8 in language that's reflected in that highlighted
9 portion of this document?

10 A No. The only thing I saw being changed is this
11 particular provision with the amount of time for
12 Council approval, and an expansion of time. There
13 was an expansion of time for the processing of the
14 settlement checks. I do not recall, Mr. Goodman,
15 seeing these handwritten notes. If you note under
16 tab three, the last page of that agreement, there is
17 a 45 day provision, and then there is 21 days after
18 approval to deliver settlement checks. I know that
19 that was expanded.

20 Q Yes. But, keeping on that paragraph for a minute,
21 starting at the top the language as reflected by the
22 -- by the --

23 A The handwritten?

24 Q No, no. It's after -- after, yes. "As a condition
25 precedent to this agreement becoming operative, the

1 monetary terms of this agreement must be approved by
2 Gary Brown, Harold Nelthrope, Walter Harris, Mayor
3 Kwame Kilpatrick, and the City Council of the City of
4 Detroit." Do you see that?

5 A Yes, I do.

6 MR. CAMPBELL: I assume that it was
7 just a reading error, the settlement, as opposed to
8 agreement.

9 MR. GOODMAN: The settlement. I
10 apologize.

11 BY MR. GOODMAN:

12 Q Do you have any explanation as to why this language
13 singles out the monetary terms of the settlement, as
14 opposed to all terms of the settlement?

15 A No, I don't.

16 Q Whose language was that, if you can recall?

17 A I don't know. I can't recall that. This is not my
18 handwriting on the handwritten document, in the
19 highlighted.

20 Q Okay, thank you. I assumed that it was not. Thank
21 you for saying that. In your view, I think you said
22 already and your testimony has been, you -- when you
23 present these settlements to Council, you never --
24 you never disclose the details and mechanics of the
25 settlement, only the monetary amounts; is that right?

1 A The Settlement Agreement.

2 Q The settlement agreements, yes. There are some
3 settlement agreements that involve more than money;
4 are there not?

5 A Yes.

6 Q Sometimes there are encompassed claims that are
7 involved and they are settled by specific terms and
8 conditions, and agreements to do certain things and
9 not do certain things; is that right?

10 A I've never seen that, but yes, there are other terms
11 of settlement agreements that do not -- do not
12 involve money.

13 Q And there are some cases that do not necessarily
14 involve money; am I right about that?

15 A I've never seen that.

16 Q But you have -- are you saying that when you disclose
17 the terms of a settlement agreement to Council, you
18 only talk about the monetary terms, or do you talk
19 about other important terms?

20 A I talk about other terms as well, to the best that I
21 can disclose in the settlement to Council, yes.

22 MR. GOODMAN: Mr. President, that's
23 all I have at this time. I'm sure Members may have
24 questions.

25 COUNCIL PRESIDENT COCKREL:

1 Absolutely. All right. I have questions, first of
2 all, then Council Member Kenyatta, then Council
3 Member Cockrel, President Pro Tem, Council Member
4 Tinsley-Talabi, and Council Member Watson for the
5 first round of questions.

6 Ms. Colbert-Osamuede, you have said
7 earlier specifically in one of your responses, I
8 quote, "I always considered myself as representing
9 the City of Detroit. I considered myself the City of
10 Detroit's lawyer," unquote. My question is in your
11 definition of the City of Detroit, does that include
12 the City Council?

13 THE WITNESS: It includes the citizens
14 and the governmental entities involved that are part
15 of the City of Detroit, the municipal corporation.

16 COUNCIL PRESIDENT COCKREL: So is that
17 a yes or a no?

18 THE WITNESS: I don't know if it's a
19 yes or no answer. I'm trying to answer it the best
20 that I can, Mr. President. I believe that if the
21 City of Detroit encompasses its citizens and all of
22 the governmental entities that are a part of the
23 municipal corporation. Sometimes we represent the
24 police department. Sometimes we represent human
25 resources. Sometimes we represent various

1 individually named employees. So that's what I'm
2 trying to express as to who the City of Detroit is.

3 COUNCIL PRESIDENT COCKREL: Let me
4 just rephrase the question and ask it more simply.
5 Do you consider that Detroit City Council is your
6 client?

7 THE WITNESS: At times, the Detroit
8 City Council is the client.

9 COUNCIL PRESIDENT COCKREL: In this
10 particular case, did you consider the Detroit City
11 Council as your client?

12 THE WITNESS: The City of Detroit was
13 my client.

14 COUNCIL MEMBER COLLINS: (Inaudible)

15 COUNCIL MEMBER COCKREL: You said City
16 Council. That was a non-responsive answer.

17 COUNCIL PRESIDENT COCKREL: Yes. So
18 in other words, that answer is -- that's a no, you
19 did not consider City Council your client in this
20 case?

21 THE WITNESS: I considered --

22 MR. CAMPBELL: If I may, only if the
23 City Council thought its interests were different
24 than the City of Detroit. The question you just
25 asked, she did answer. It reflects now back on you;

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how do you interpret your role?

COUNCIL PRESIDENT COCKREL: Certainly at that point in time, I do not think the interests of this Council were different than those of the City of Detroit.

MR. CAMPBELL: Then I think you can ask my client if she believes otherwise. I would assume by her answers that she also believed they would be consistent.

COUNCIL PRESIDENT COCKREL: Well, we'll let your client speak for herself on that.

THE WITNESS: The City of Detroit was my client, which encompassed City Council.

COUNCIL PRESIDENT COCKREL: Thank you. It took awhile to get there, but we got there.

Another question I have is do you believe, based on the fact that this motion was produced which did make reference to and included excerpts of the text messages, in your view, was that the major reason for the change and strategies and the willingness to adopt a global settlement to resolve all these things? Is that the key incident to this, in your view?

THE WITNESS: The key incident -- I don't think there was a key incident, but it was very

1 important, Mr. President, to us. It was important to
2 me to get those text messages out of the hands of the
3 Plaintiffs. So it was important to me that those
4 text messages be out of the hands of the Plaintiffs,
5 and that we resolve the two lawsuits, Harris and
6 Nelthrope, and Brown -- Brown, Nelthrope, and Harris.
7 The Harris litigation was very important to me to
8 resolve, particularly in light of the verdict in the
9 Brown and Nelthrope case. So it was important; the
10 text messages were important.

11 COUNCIL PRESIDENT COCKREL: Last two
12 questions. The first question or the last two is you
13 said earlier that you didn't know what was in the
14 text messages. I guess where I'm going is if you
15 didn't know what was in the text messages, why did
16 you consider it to be so important to get that
17 material out of the hands of the opposing party?

18 THE WITNESS: Let me make myself very
19 clear. I was told or it was my belief that there
20 were text messages that dealt with issues that were
21 privileged under the deliberative processes, and I'm
22 sure you understand what I mean by that. I was also
23 told that there was information or text messages that
24 would be detrimental to certain relationships as it
25 relates to this body, the executive branch,

1 businesspeople, and other politicians outside of the
2 City of Detroit. I did not want that to be disclosed
3 in the public. I believed that that was detrimental
4 to the City of Detroit and its relationships. That's
5 why it was important to me. This was a case where
6 everything -- everything was published. Everything
7 was published. There was a deposition that was
8 published when we could not even be present at the
9 deposition. And it was still on the floor, and that
10 was published. So yes, it was very much a concern to
11 me that that information, which I believed to be
12 detrimental to my client, the City of Detroit and
13 even this Council. To this Council it was very
14 important that that be taken out of the hands of the
15 Plaintiffs.

16 COUNCIL PRESIDENT COCKREL: And that's
17 my questions for now, but I'm definitely going to
18 come back for follow-up questions. You've been an
19 attorney for 19 years and I have to ask after
20 processing law for 19 years, is it standard operating
21 procedure for you to play a key role in negotiating a
22 settlement agreement that was motivated largely by
23 new information, and you hadn't even read that
24 information? Is that how you usually operate?

25 THE WITNESS: No. In settlement

1 negotiations, people often say they have certain
2 things. That is, you go to trial and you disclose
3 certain things that, you know, they say that they
4 have and may describe what they have. It's a risk.
5 Litigation is a risk and there is a balancing test as
6 to whether or not you want to take that risk before a
7 jury. We had just had a verdict of six and a half
8 million dollars and on that day, the verdict and
9 interest and \$7.9 million dollars. In the Harris
10 case, there were motions to reopen discovery. There
11 was no doubt in my mind that that motion was probably
12 going to be granted. There was going to be
13 information that earlier on in the litigation they
14 had been foreclosed from receiving that I believe
15 they would have received. And I also think that the
16 text messages, or if there was information in the
17 text messages that were -- that was beneficial to the
18 litigation of the Plaintiffs, that that also would be
19 utilized in that litigation, and it was important to
20 me to shut that down. And sometimes you get
21 information and you may not have the picture. You
22 may not have the document or what have you at the
23 time, but the risk is there and you want to shut it
24 down. And yes, sometimes it happens that way.

25 COUNCIL PRESIDENT COCKREL: Council

1 Member Kenyatta is next.

2 COUNCIL MEMBER KENYATTA: Thank you,
3 Mr. President, and thank you, Ms. Colbert-Osamuede
4 for being here.

5 You just stated very clearly that the
6 text messages, it was very important, very crucial
7 and necessary that you shut that down. But you also
8 indicated that in negotiation, you were only
9 concerned with the dollar amount; you were not
10 concerned with all of the other entries in Mr.
11 Stefani's agreement. It didn't concern you at all
12 until later on that evening; that you were only
13 working out and working on the dollar amount. Not
14 where the records would go, not what would be
15 included, what was turned over, but you also just
16 stated that this was crucial. It was very important
17 to you that we get quote/unquote your hands on that
18 information and to shut it down, but you testified
19 that that was of no concern and that you were just
20 dealing with the dollar amount. And that was the
21 only thing that you discussed, and that was the only
22 thing that you saw. And how could that be the case
23 as it relates to the so-called settlement agreement?

24 THE WITNESS: I think I said that when
25 we were at Charfoos and Christensen --

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COUNCIL MEMBER KENYATTA: Right.

THE WITNESS: -- we were interested in the dollar amount.

COUNCIL MEMBER KENYATTA: Right.

THE WITNESS: We were instructed to get things down in writing; get this agreement in writing before the night ends.

COUNCIL MEMBER KENYATTA: Right.

THE WITNESS: That was by the facilitator, Mr. Washington. When we left the premises of Charfoos and Christensen, Mr. Stefani indicated that he had a draft, which I didn't see, of settlement terms that he would type up and --

COUNCIL MEMBER KENYATTA: So you did not see those terms?

THE WITNESS: I didn't see the handwritten terms.

COUNCIL MEMBER KENYATTA: Then you had not worked on those terms?

THE WITNESS: No, we had not. We had not specified those terms during the course of the negotiations at Charfoos; that came later. When we went to Mr. Stefani's office, he presented the typed document that is the October 17th agreement.

COUNCIL MEMBER KENYATTA: And that was

1 the basis of what led to you all being at the
2 Internal Operation meeting the next day, correct?

3 THE WITNESS: I was supposed to type
4 of the settlement agreement -- or the memo. Excuse
5 me. I want to make sure that I'm clear -- the
6 settlement memo and to present it to the Internal
7 Operations Committee by 9:00 o'clock. I believed I
8 could get it there by 9:00 o'clock. I think I got it
9 there at about 11:00 o'clock. But it was to be
10 presented that day, the Thursday or Friday, which
11 would have been October 18th.

12 COUNCIL MEMBER KENYATTA: And this is
13 not a question, but for the record, Mr. President,
14 the Internal Operations Committee did meet on the
15 18th, I believe at 10:00 o'clock. Members were here
16 at 10:00 o'clock, and we did receive a call that
17 evening indicating that there had been a settlement,
18 and we had a meeting scheduled for 10:00 o'clock. So
19 I said, "Fine. Get it to us by nine so that the
20 Committee can review it and it can be discussed," so
21 it could not be on that agenda for that day, and I'm
22 not sure what time you got there, but it was -- it
23 was much later than ten. In fact, we had concluded
24 all of the business on the agenda and we were about
25 to adjourn, and we were assured that you were coming,

1 that you were on your way. You recollect that,
2 correct?

3 THE WITNESS: I do recall that.

4 COUNCIL MEMBER KENYATTA: Thank you.
5 I believe I'm almost at my last question. There are
6 a number of documents that are here. There is a
7 Notice of Rejection of Settlement Terms out of the
8 October the 17th facilitation that is signed by the
9 Mayor, as well as an approval of conditions that is
10 also signed by the Mayor, and a number of other
11 agreements and general release. You are aware of all
12 of those documents and had some input in either
13 reading or the construction of those documents on any
14 level?

15 THE WITNESS: I think you're going to
16 have to walk me through the documents that you're
17 referring to.

18 COUNCIL MEMBER KENYATTA: Tab four --
19 I'm sorry. Tab five is the rejection of the
20 settlement.

21 THE WITNESS: The knowledge of this
22 document occurred on December 5th. That's where I
23 received this document.

24 COUNCIL MEMBER KENYATTA: On December
25 the 5th?

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THE WITNESS: That's correct.

COUNCIL MEMBER KENYATTA: Now, Mr. McCargo indicates that while he was still Mr. Kilpatrick's attorney that, "I participated in discussion, negotiation, and exchange of all documents between all counsel during October -- October the 26th and November the 1st." Are you saying that happened on December the 5th?

THE WITNESS: I didn't participate in the drafting of this document, Councilman. It was presented to me in final form with a signature on October 5th -- I mean December the 5th -- excuse me -- when we were doing our closing, so to speak, and exchanging the last of the settlement checks to Mr. Stefani.

COUNCIL MEMBER KENYATTA: Okay. I don't have another question. You can put me back on the list, please.

COUNCIL PRESIDENT COCKREL: Council Member Cockrel?

COUNCIL MEMBER COCKREL: Thank you, Mr. President. Good afternoon.

First question for the record, Ms. Colbert-Osamuede, the attorney who is representing you here today is being paid for by whom?

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THE WITNESS: I have -- I have actually contacted Mr. Campbell.

COUNCIL MEMBER COCKREL: He was personally retained by you and he will not be billing the City of Detroit?

THE WITNESS: I'm not going to say that, Councilwoman.

MR. CAMPBELL: You've already got the answer to that.

COUNCIL MEMBER COCKREL: I'd like to hear that.

MR. CAMPBELL: I assume your question is will the Law Department be responsible in any way for my fees, or will City funds be used for my fees?

COUNCIL MEMBER COCKREL: Will the taxpayers of Detroit pay for this?

MR. CAMPBELL: The answer is that I have an expectation that I've been led to believe that this coverage for the employees of the City of Detroit under certain circumstances and that this matter may fall under that. If so, then some or all of my fees will be paid as a result of that statute, law, contract, or whatever the agreement is. I don't have any personal knowledge of that, but I have an expectation.

1 COUNCIL MEMBER COCKREL: Do you have a
2 retainer agreement?

3 MR. CAMPBELL: I have a retainer
4 agreement with my client, yes.

5 COUNCIL MEMBER COCKREL: That's with
6 the City of Detroit?

7 MR. CAMPBELL: No, I do not have an
8 agreement with the City of Detroit. I have an
9 expectation that my services will be subject to an
10 agreement at some time.

11 COUNCIL MEMBER COCKREL: Okay, thank
12 you.

13 MR. CAMPBELL: You're welcome.

14 COUNCIL MEMBER COCKREL: Following up
15 on issues that Mr. Kenyatta was talking about text
16 messages. The testimony as I heard it today is that
17 one of the most important things in your mind, Ms.
18 Colbert-Osamuede, was to get the text messages out of
19 the hands of the Plaintiffs, get the settlement
20 agreement signed on 12/05, and get this behind us.
21 If the Settlement Agreement made no mention of text
22 messages, then how were they being taken care of in
23 your mind?

24 THE WITNESS: Because it was my
25 understanding that at some point, those messages were

1 going to be turned over to the Mayor's lawyer. And
2 so, at that point in time, it was out of the hands of
3 the Plaintiffs.

4 COUNCIL MEMBER COCKREL: But you had
5 nothing in writing. You had nothing. You had no
6 personal knowledge of any document that you were
7 party to and knew about?

8 THE WITNESS: Well, I think the --

9 COUNCIL MEMBER COCKREL: Or the
10 Confidentiality Agreement, about which you made
11 reference.

12 THE WITNESS: It was testified that
13 they agreed to transfer ownership and deliver it to
14 the designated attorney by the Mayor and the City
15 with all records. So at that point in time, the
16 records were transferred to the Mayor's attorney and
17 as far as I was concerned, it was out of the hands of
18 the Plaintiffs. And I'm talking about the October
19 17th agreement, Ms. Cockrel.

20 COUNCIL MEMBER COCKREL: Okay.

21 THE WITNESS: 10/3.

22 COUNCIL MEMBER COCKREL: Okay. But
23 that was the one that nobody -- that the Mayor
24 rejected on behalf of whomever.

25 THE WITNESS: I didn't know that until

1 the 5th, that the Mayor had rejected this settlement
2 or the terms of this agreement.

3 COUNCIL MEMBER COCKREL: Can you
4 appreciate that it -- it's inherently incredible that
5 we have all these lawyers being paid for with public
6 dollars who don't know what each other is doing, but
7 at the end of the day it's all supposed to be
8 protecting the City of Detroit. So you don't know
9 that the Mayor has rejected a settlement that you
10 think is in place and that they had changed. The
11 language is changed in the Settlement Agreement and
12 nobody knows by whom, but the Council -- the City
13 Council went from approving the entire settlement to
14 only approving the monetary terms. And then we come
15 up to December 5th and you don't know about the
16 Mayor's rejection of one agreement; there is a new
17 agreement. I mean, can you appreciate that this is
18 inherently incredible?

19 THE WITNESS: I don't think it's
20 incredible. I believe that settlement agreements and
21 the terms change all the time, and the terms of this
22 October 17th agreement, the parties, the Mayor had
23 the explicit right in this agreement to reject or
24 accept, and that's part of this agreement on the
25 17th. I was not counsel for the Mayor.

1 COUNCIL MEMBER COCKREL: Thank you.
2 Last question for this round. Is it your belief that
3 a governmental body can enter into a confidentiality
4 agreement that is not subject to disclosure because
5 it's approved by City Council?

6 MR. CAMPBELL: I think I may --
7 respectfully, I think I understand the question. I
8 think it falls under both questions with regard to
9 the law, department policy, and/or a question of law
10 that you're asking her to comment on. I don't
11 believe that's appropriate, so I don't believe it
12 will be answered.

13 COUNCIL MEMBER COCKREL: Why?

14 MR. CAMPBELL: Why is it not
15 appropriate? Well, it's my understanding that under
16 the Charter, that if you have questions as a body,
17 when you seek advice and opinions, you do so through
18 Corporation Counsel. I can site the chapter and
19 verse if you'd like, but I presume you're aware of
20 that. So if you're seeking advice or seeking an
21 opinion, unlike the other witnesses who have come
22 before you who are not employees of the Law
23 Department, they're free to give that. My client, as
24 much as she may like to, and as much as she may have
25 an opinion or may not, cannot -- and that's what I

1 prefaced with, there are certain things that she
2 cannot say. That would be wrong to ask an employee.
3 And again, it's my understanding that under Charter,
4 that one of the things the Council cannot do is
5 direct an employee of one of the departments to do a
6 specific task. You have authority and the right to
7 investigate, and to inquire under the Charter, as I
8 have read and understand it, so those appropriate
9 when we're here to talk about the facts. But
10 respectfully, I believe your question invades that
11 and my client simply cannot answer.

12 COUNCIL MEMBER COCKREL: I want to
13 assure you, sir, that the record that you just made
14 here today will come back to haunt you, your client,
15 and your client's boss. Thank you.

16 COUNCIL PRESIDENT COCKREL: President
17 Pro Tem?

18 COUNCIL PRESIDENT PRO TEM CONYERS:
19 Thank you. Good afternoon.

20 THE WITNESS: Good afternoon.

21 COUNCIL PRESIDENT PRO TEM CONYERS: I
22 thank you for coming, because at first we thought you
23 weren't going to come.

24 COUNCIL PRESIDENT COCKREL: The
25 microphone --

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COUNCIL PRESIDENT PRO TEM CONYERS: I
thank you for coming because we were told at one
point that you may not come, so I'm glad that you
chose to come.

My first question to you is you
testified that all settlements, including settlements
as they relate to City Council, have all been
confidential, and have all had confidentiality
provisions, and that the settlement memorandum does
not include all of the terms of the eventual
settlement agreement as executed by Plaintiffs. Did
you intend to deceive the City Council when you did
not include those in this particular case?

THE WITNESS: Absolutely not.

COUNCIL PRESIDENT PRO TEM CONYERS: If
City Council members are required to testify under
oath regarding his or her employment relationships,
would City Council members be entitled to have City -
- the City corporate counsel or a private attorney
designated for them, which is picked by the corporate
counsel? Would that be in line with what you were
supposed to do?

THE WITNESS: It's my understanding
that you are entitled to representation.

COUNCIL PRESIDENT PRO TEM CONYERS:

1 Okay. My next question is what lessons have you
2 learned from this experience that could improve or be
3 passed on to improve the manner in which the City of
4 Detroit Law Department operates to avoid a conflict
5 between the executive and legislative branches of
6 City Council?

7 MR. CAMPBELL: Member, if I may have a
8 moment with my client before she answers that?

9 COUNCIL PRESIDENT PRO TEM CONYERS:
10 Yes.

11 MR. CAMPBELL: Thank you. I really
12 appreciate it.

13 THE WITNESS: One of the things that -
14 - lessons that I've learned, and I think that would
15 be beneficial to both the Law Department and City
16 Council, is when you have a settlement of this large
17 of a dollar amount, then it should be standard that
18 there be a closed session to discuss the ins and outs
19 of the dollar amount, and to even ask before you vote
20 has there been an agreement reached, and can we
21 discuss the terms of that agreement? I think -- I
22 think there a lot of other lessons that can be
23 learned, and I think it is appropriate that
24 Corporation Counsel and City Council sit down in
25 dialogue about it in the future. That is the first

1 thing that would come to my mind sitting here today.

2 COUNCIL PRESIDENT PRO TEM CONYERS: My
3 next question is had you had a conversation with John
4 Johnson of the existence of the text messages when he
5 came to be Corporation Counsel for the City of
6 Detroit before the envelope was conveyed to him?
7 Because you said in conversation today that you had
8 been told by previous Corporation Counsel, Ruth
9 Carter -- by Judge Ruth Carter -- that these things
10 could be out there as it relates to talking about
11 members of Council or people in the business
12 community and things like that. Did you inform him
13 at any time since he's been here, before the
14 presentation of the envelope by Mr. Stefani, that
15 these things were a possibility?

16 THE WITNESS: Mr. Johnson came into
17 this case very late.

18 COUNCIL PRESIDENT PRO TEM CONYERS:
19 Yes.

20 THE WITNESS: His knowledge of the
21 case -- I think when he started the case we were
22 still on appeal, if I'm not mistaken. And Ms.
23 Braceful was still the Deputy Corporation Counsel,
24 and she directed litigation. I don't know if the two
25 of them had discussions about the litigation at that

1 point in time. I can tell you that I do not recall
2 when Mr. Johnson initially came to the Law Department
3 discussing that matter with him or those issues with
4 him. I know that probably after the trial, or while
5 we were in the course of the trial litigation, we
6 talked a number of times about the case, but the text
7 messages were not an issue in the -- in the trial; it
8 didn't come up. The text messages were not an issue
9 --

10 COUNCIL PRESIDENT PRO TEM CONYERS:

11 But my --

12 THE WITNESS: -- as it relates to
13 that. So I guess the answer to your question is when
14 he first started with the Law Department, I did not
15 talk to him about the Brown/Nelthrope litigation and
16 all of the nuances, including the text messages.

17 COUNCIL PRESIDENT PRO TEM CONYERS:

18 Okay.

19 THE WITNESS: I'm not certain if Ms.
20 Braceful provided him with that information.

21 COUNCIL PRESIDENT PRO TEM CONYERS:

22 But you did not?

23 THE WITNESS: I did not.

24 COUNCIL PRESIDENT PRO TEM CONYERS:

25 Okay, thank you.

1 COUNCIL PRESIDENT COCKREL: Council
2 Member Tinsley-Talabi.

3 COUNCIL MEMBER TINSLEY-TALABI: Thank
4 you, Mr. President. Good afternoon.

5 Ms. Osamuede, you represented the
6 Mayor and the City in the Brown/Nelthrope case. Do
7 you think that your representation created a conflict
8 of interest as it relates to the Confidentiality
9 Agreement?

10 THE WITNESS: I did not represent the
11 Mayor after June, 2004. I did not consider myself
12 the Mayor's attorney. Mr. McCargo was the Mayor's
13 attorney. So I didn't have anything -- I did not
14 draft the Confidentiality Agreement. There were
15 provisions in the Settlement Agreement that talked
16 about confidentiality, but I did not consider myself
17 the Mayor's attorney.

18 COUNCIL MEMBER TINSLEY-TALABI: So in
19 your point of view, was there a possible conflict
20 with anyone in the Law Department?

21 THE WITNESS: And if I can clarify,
22 except for the Harris matter, I still was talking to
23 the Mayor, the police chief, and the City of Detroit.
24 There was a motion pending for dismissal at that
25 point in time that had not been heard.

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COUNCIL MEMBER TINSLEY-TALABI: So you did not discuss the issue of a possible conflict of interest with anyone in the Law Department?

THE WITNESS: When? For which case?

COUNCIL MEMBER TINSLEY-TALABI: For any of it.

THE WITNESS: Well, first of all, there was counsel provided for each main defendant in 2004. When this case first was filed, there was always contemplation that there would be separate counsel for each of the defendants, all of them. What we filed initially was a motion in lieu of answer, which we had hoped would dispose of the entire case on various legal issues, and when that did not happen and was finally ruled upon, a decision at that point was made to separate and get separate counsel for each of the defendants that remained in the action.

COUNCIL MEMBER TINSLEY-TALABI: Did you try to make City Council aware of the agreement when you recommended settlement of the case on October 18th, or was Council informed on October 23rd, and did you say that you were instructed not to relay the information you had?

THE WITNESS: I was never instructed

1 not to share any information with Council.

2 COUNCIL MEMBER TINSLEY-TALABI: Did
3 you at any point discuss the Confidentiality
4 Agreement with the Mayor?

5 THE WITNESS: I want to be clear with
6 respect to the Confidentiality Agreement, which is --
7 I don't know what tab that is -- tab nine, the answer
8 is no. I did not discuss that with the Mayor. And
9 with respect to the October 17th agreement, which is
10 tab three, I did not discuss that with the Mayor.

11 COUNCIL MEMBER TINSLEY-TALABI: Did
12 anyone else discuss it with you?

13 THE WITNESS: I discussed it among my
14 co-counsel, Mr. Copeland, at the time it was being
15 drafted, and I don't recall discussing it with anyone
16 else. And I'm referring to the October 17th
17 agreement.

18 COUNCIL MEMBER TINSLEY-TALABI: Thank
19 you.

20 COUNCIL PRESIDENT COCKREL: Council
21 Member Watson.

22 COUNCIL MEMBER WATSON: Thank you, Mr.
23 President. Good afternoon.

24 THE WITNESS: Good afternoon.

25 COUNCIL MEMBER WATSON: I consider the

1 high number and high quality of attorneys in this
2 case, whose brilliant legal practices have now been
3 publicly questioned because the lapses of some and
4 loyalty by many. It's painful for everybody to know
5 that. It's tragic that it was brought to the City
6 this afternoon.

7 I want to zero in on the projection of
8 the -- as you well know, I voted no. Before I was
9 given anything, text messages, or even knew about
10 this, I voted no for the use of public funds. What I
11 did not know, subsequent to the Council's
12 consideration of the settlement, was that there was a
13 rejection of the settlement that was approved by the
14 Council.

15 Only one resolution was presented to
16 the Detroit City Council. Within that resolution,
17 which was approved by Council, was subsequently -- I
18 see now that it was rejected by Mayor Kwame
19 Kilpatrick. What he rejected was not only his
20 opportunity to sign it, but he also represented
21 legally the Council's approval.

22 As an attorney with almost two decades
23 of legal expertise, most of which has been with the
24 City of Detroit, and one who knows your way not only
25 around the courtroom, but around city hall; at what

1 point did the attorneys surrounding this case
2 understand that that second agreement that we were
3 not made aware of wasn't the first signature by the
4 Mayor and others, never came to City Council? That
5 second agreement, which has some language referencing
6 an October Council approval, in my view was null and
7 void because you can't reference something that the
8 Mayor rejected. When the Mayor rejected the October
9 17th facilitation, it also rejected and made null and
10 void the Council approval. So at what point were
11 you, as a City attorney, who works for the City of
12 Detroit, which has two equal branches of government,
13 the executive branch and the City Council, the two
14 equal branches of government for the City -- it's not
15 ever just the executive branch and not ever just the
16 legislative body -- the City is a City with two equal
17 branches of government, it is always inherent that
18 the executive branch and the City Council are your
19 clients if you're on the payroll at the Law
20 Department -- at what point was there going to be any
21 understanding that that second agreement that people
22 like me were just made aware of didn't come before
23 City Council?

24 Under the Charter, which I know that
25 you know very well, an agreement is not an agreement

1 until it's approved by Council. Somebody knew that
2 back in October, which is why it was brought to City
3 Council, which is why people made a rush to get it to
4 the Internal Operations Committee. Why was that
5 second agreement not brought before City Council?

6 THE WITNESS: Are you referring to the
7 Confidentiality Agreement?

8 COUNCIL PRESIDENT PRO TEM CONYERS: We
9 rejected the first one. She's talking about the one
10 he accepted.

11 COUNCIL MEMBER WATSON: Yes.

12 MR. CAMPBELL: Are you talking about
13 the agreement November 1st?

14 COUNCIL MEMBER WATSON: Correct.

15 MR. CAMPBELL: That was testified to
16 being executed December 5th.

17 COUNCIL MEMBER WATSON: Yes.

18 MR. CAMPBELL: The only one that --

19 COUNCIL MEMBER WATSON: It never came
20 before Council. That agreement was never brought
21 before Council. And somebody with almost two decades
22 of experience with City settlements and litigation,
23 you know that every agreement -- every agreement has
24 got to come before Council. So the first proposed
25 agreement that was brought before Council and agreed

1 to by eight members of the Council was rejected by
2 the Mayor, and that rejected everything, including
3 the Council approval. So the second agreement was
4 never brought before Council.

5 THE WITNESS: If I understand your
6 question, and I do want to understand your questions
7 so I can give you the best answer that I can, you're
8 referring to the two settlement agreements, the
9 Brown/Nelthrope settlement agreement and the Harris
10 settlement agreements, executed on December 5th,
11 2007. Is that what you're referring to?

12 COUNCIL MEMBER WATSON: I'm referring
13 to two things. There was an October proposal to
14 Council that you helped facilitate, you and others.
15 That proposal was agreed to by eight members of the
16 Council, but was ultimately rejected by Mayor
17 Kilpatrick, some say in order to avoid FOIA by the
18 Detroit Free Press. I don't know. But, there was a
19 subsequent agreement signed by the Mayor and others.
20 That second agreement was never brought back before
21 the Detroit City Council. I can't understand why
22 attorneys who know to bring the first proposal to the
23 Council didn't understand the legal necessity of
24 bringing that second resolution the City Council.

25 THE WITNESS: I'm assuming that you're

1 responding to the Confidentiality Agreement, and I'm
2 trying to follow the documents -- the documents in
3 this packet so I can answer. The Confidentiality
4 Agreement is --

5 MR. CAMPBELL: Just a moment. I'm
6 going to try to clarify.

7 COUNCIL MEMBER WATSON: Take all the
8 time you need.

9 MR. CAMPBELL: I believe we're ready
10 to proceed. Thank you.

11 COUNCIL MEMBER WATSON: You're
12 welcome.

13 THE WITNESS: The settlement
14 agreements that were signed on October -- excuse me --
15 - December 5th --

16 COUNCIL MEMBER WATSON: Yes.

17 THE WITNESS: -- were not brought to
18 Council because the monetary amount had not changed.

19 COUNCIL MEMBER WATSON: On that point,
20 nowhere in the City Charter does it say you have to
21 bring agreements or contracts to Council unless the
22 monetary amount stays the same. That's nonsense.
23 That first agreement -- the first proposed agreement
24 that was brought before Council in October was agreed
25 to by eight members of the body; it was supported. I

1 assume that more than \$8,000,000.00 got paid out soon
2 after. However, the Mayor rejected that agreement;
3 we have it in writing. He rejected that October 17th
4 that had been agreed to by Council. There was a
5 subsequent agreement that was signed by the Mayor and
6 that had been perpetrated as an executed agreement,
7 and there was a reference to a monetary amount
8 allegedly approved by Council. That alleged approval
9 in October was made null and void by the Mayor's
10 rejection of the proposal. When the Mayor rejected
11 the proposal, and we have that in writing, on October
12 23rd, it rejected everything. So the approved eight
13 votes for the \$8.4 million dollars became null and
14 void when the Mayor, in writing, rejected that
15 October facilitation.

16 When the December -- when the November
17 1st agreement was signed by the Mayor, not only the
18 November 1st piece or the December 1st piece, neither
19 of them came back before the City Council. According
20 to the Charter, there is no procedure whatsoever for
21 the executive branch solely to execute any agreement
22 or contract; there is no provision for that. By the
23 same process that brought the October resolution to
24 the Council, there should have been a subsequent
25 parallel track for the second agreement after the

1 Mayor rejected the first agreement. No one,
2 including you, ever brought that back before Council,
3 which would now make that second so-called agreement
4 null and void. No Council sanction is in place; no
5 Council approval; there was no vote. A simple
6 reference to an October approval does not make a
7 Council vote. The reference is in small print to the
8 monetary agreement in October does not make it a
9 Council approval, and of course, you know that. You
10 have a law license; I don't.

11 Why is it that no one felt the
12 necessity of bringing the second agreement to people
13 like me who are elected officials, knew nothing about
14 a second agreement? We knew nothing about it; it
15 never came before Council. Why is that?

16 THE WITNESS: First of all, the
17 settlement agreements, even when they're changed, are
18 not brought before Council. And I think Councilwoman
19 Cockrel set out that in the resolution it indicates
20 that the release and settlement is approved by the
21 Law Department. So changes in that settlement
22 agreement --

23 COUNCIL MEMBER WATSON: There is not a
24 -- if the Law Department does not approve the
25 resolution, it is not legally binding. To be legally

1 binding, City Council votes. If there was a vote --
2 was there a vote in October?

3 THE WITNESS: Yes, there was.

4 COUNCIL MEMBER WATSON: There was a
5 vote in October.

6 THE WITNESS: Yes, there was.

7 COUNCIL MEMBER WATSON: Okay. But
8 Council approved -- that same vote that led to
9 Council approval eight to one, that is being cited as
10 some kind of approval. Now that was rejected when
11 the Mayor rejected the original proposal. I mean --
12 and Section 6-403 of the Detroit City Charter,
13 approved by the citizens of this City, quote: "No
14 civil litigation of the City may be settled without
15 the consent of the City Council." No civil
16 litigation of the City may be settled without the
17 consent of the City Council.

18 When something that was approved by
19 City Council is rejected by the Mayor, which he did
20 in writing, and a second settlement comes forth, the
21 Mayor's signature is not enough. It was not brought
22 before Council.

23 MR. CAMPBELL: Mr. President, if I may
24 interject with an objection; not to the question
25 necessarily, but maybe to the time and the place. I

1 believe that's a question better presented to Mr.
2 Johnson in his testimony, and I'd ask if we could
3 move on. My client has answered to the best she can.
4 I appreciate Member Watson's patience with her, and -
5 - but if I may politely sort of suggest that.

6 COUNCIL PRESIDENT COCKREL: It is
7 Council Member Watson's prerogative as to whether or
8 not she wants to accept that or not.

9 MR. CAMPBELL: Thank you.

10 COUNCIL MEMBER WATSON: Let me just
11 say once again, I find it tragic that so -- the high
12 number and the high quality of brilliant attorneys
13 whose legal paths have been put at risk because of
14 this business. It's very painful and injurious to
15 the folks personally, individually, and collectively
16 in the City, and it's tragic. Thank you, Mr.
17 President.

18 COUNCIL PRESIDENT COCKREL: You're
19 welcome. Back to me now for an additional question.

20 COUNCIL MEMBER JONES: President, do
21 you have me on this list?

22 COUNCIL PRESIDENT COCKREL: You are on
23 the list. You're on the second round.

24 COUNCIL MEMBER JONES: Thank you.

25 COUNCIL PRESIDENT COCKREL:

1 (Inaudible) Yes, Council Member Talabi? I believe
2 we're back to you, Council Member.

3 COUNCIL MEMBER TINSLEY-TALABI: In
4 terms of timing, how far -- long have you (inaudible)
5 possible that the next --

6 COUNCIL PRESIDENT COCKREL: Well, we -
7 - that's not necessarily going to be the case. Mr.
8 Goodman did come up to me earlier and suggest that
9 that may be something we want to consider. If that's
10 what Council members want to do, we can do that and
11 make it the first witness for tomorrow morning.

12 MR. GOODMAN: I believe that would be
13 acceptable with Mr. Johnson. I have talked to him
14 for a moment and his attorney, and I think it would
15 be a good idea because it seems to me we've got at
16 least another half an hour with this witness. And it
17 would be -- and I think that the other two witnesses
18 can accommodate that schedule that we have scheduled
19 tomorrow. We can still complete these hearings
20 tomorrow, so that would be my personal
21 recommendation.

22 COUNCIL PRESIDENT COCKREL: I would
23 suggest that what you do is reach out to them tonight
24 and perhaps tell them to adjust their schedule so
25 that the first witness who was originally supposed to

1 be here doesn't show up early, because I can imagine
2 we'll be spending quite a bit of time in the morning
3 with the first witness.

4 MR. GOODMAN: I will be reaching out
5 to them.

6 MR. CAMPBELL: Mr. President, if I may
7 -- although I am not a -- I do have water issues from
8 time to time. I think maybe in a half hour if we
9 could take a break if we're still in session, I would
10 appreciate it.

11 COUNCIL PRESIDENT COCKREL: Thirty
12 minutes from now?

13 MR. CAMPBELL: Yes, sir.

14 COUNCIL PRESIDENT COCKREL: That
15 should be fine. Maybe we'll finish by then. I have
16 a couple of additional questions for you, Ms.
17 Colbert-Osamuede.

18 My question to you, going back to a
19 question that was raised earlier, but it's an
20 important question and I do need to revisit it, and
21 that's a question of a potential conflict of
22 interest. What is your understanding of the process
23 that the Law Department uses in order to asses
24 whether or not, when they're handed a case, that
25 there may be a conflict of interest between the Mayor

1 and the City Council?

2 THE WITNESS: They may -- or
3 identifying a conflict?

4 COUNCIL PRESIDENT COCKREL: Yes. What
5 is the practice that the Department uses to determine
6 whether or not one exists?

7 THE WITNESS: I think originally you
8 do have to kind of first look at the claim and do
9 some initial digging, so to speak, and investigation
10 as to what the claims are, and discussion with
11 witnesses and also the named parties, if they are
12 named. I think at that point in time, the issue of
13 conflict is generally brought to the attention of --
14 and I'll use me as an example, because at that point
15 in time it would be brought (inaudible) -- I would
16 bring it to Corporation Counsel. Anyone who I would
17 supervise would bring it to me, their immediate
18 supervisor to me, and then on up the chain. But
19 using me as an example, potential conflicts or actual
20 conflicts would be brought to the attention of the
21 Corporation Counsel. Generally speaking, there is
22 properly a discussion among, I would say upper
23 managers, as to what that conflict is. A decision is
24 determined if there is potential conflict -- a
25 potential or an actual conflict. In -- in times when

1 there may be a close call, oftentimes we will call
2 the State Bar to get direction as to whether or not a
3 conflict exists and what steps we need to take.
4 Oftentimes, even our own in-house persons, who
5 (inaudible) really the person in governmental
6 affairs, could also speak to the conflict.

7 But when a conflict is first
8 identified, it would go up through the chain of
9 managers, ultimately probably being discussed with
10 the Corporation Counsel, then discussed with respect
11 to those managers -- upper managers in that
12 department. If there is a disagreement, or -- a
13 disagreement I would say, or a close call, the State
14 Bar has a hotline or a entity -- an entity where you
15 can call and get guidance as it relates to conflict
16 issues, and that's how conflict issues as far as
17 since I've been there have been handled.

18 COUNCIL PRESIDENT COCKREL: Was that
19 process used in this case; was such an evaluation
20 done?

21 THE WITNESS: Yes. And initially,
22 when this case was filed, the goal at first, as I've
23 indicated, was to file a motion in lieu of answer to
24 dismiss the case on the face of the pleadings. And
25 when that ultimately was not granted, at that point

1 in time separate counsel was, in fact, engaged for
2 the individuals named Defendants.

3 COUNCIL PRESIDENT COCKREL: Was there
4 any other Law Department attorney that assisted you
5 in your work on this issue? I know you worked, of
6 course, with Mr. Johnson, but were there any other
7 attorneys who assisted you in any way?

8 THE WITNESS: Initially on the case,
9 it was myself and Ms. Holmes, initially.

10 COUNCIL PRESIDENT COCKREL: What is
11 her full name?

12 THE WITNESS: Shannon Holmes.

13 COUNCIL PRESIDENT COCKREL: Oh, that's
14 right.

15 THE WITNESS: And then when we were
16 drafting the initial motion for in lieu of answer, we
17 drew from various expertise in the department, and
18 litigation people, people -- the litigation people
19 from governmental affairs and various individuals.
20 We met to draft that motion in lieu of answer.
21 Certain issues were divided up among the various
22 lawyers and their disciplines. Then at that point in
23 time, as you know Council President, we had a layoff;
24 we had resource problems. And so, there came a time
25 when yes, I was the sole City attorney on that case.

1 Obviously, I could give my research assistance, or
2 even sometimes other -- other attorneys matters for
3 which they could assist for research, but until the
4 matter of the motion had been disposed of, I was the
5 attorney handling the matter.

6 COUNCIL PRESIDENT COCKREL: I have no
7 further questions for now. I may come back for the
8 third round. Next is President Pro Tem.

9 COUNCIL PRESIDENT PRO TEM CONYERS:
10 Thank you. My first question is Mr. McCargo stated
11 that he could not make the decision to settle. Can
12 you tell me whose decision it was to settle?

13 THE WITNESS: I think he said he had
14 to recommend settlement, just as I believe I
15 recommended settlement, but ultimately City Council
16 approves the settlement that was submitted to them.
17 So in my mind, ultimately, City Council approved that
18 settlement.

19 COUNCIL PRESIDENT PRO TEM CONYERS: I
20 understand the City Council part, but within your Law
21 Department -- in the Law Department when you
22 recommend settlement, who do you recommend that to
23 before it gets to City Council?

24 THE WITNESS: Okay. I didn't
25 understand your question.

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COUNCIL PRESIDENT PRO TEM CONYERS:

Yes.

THE WITNESS: It depends on the dollar amount. Supervisors have a figure of which they have settlement authority, and then they would provide that attorney who was requesting that settlement authority. There is a write-up. There is a write-up generally as to the reasons why you think the matters should settle.

COUNCIL PRESIDENT PRO TEM CONYERS:

Okay.

THE WITNESS: And then it's evaluated by that supervisor, if it's in that supervisor's range of authority. That's the first line supervisor. That supervisor might say yes, you have authority to settle this matter within this dollar range. If it goes outside of that supervisor's dollar amount, the supervisor is still aware of the attorney's desire to settle the matter, and there is discussion and written memorandum to that supervisor, who then brings it to that person's division chief. There is discussion among the supervisor, the attorney who is recommending the settlement, and ultimately if that authority is within that chief's range of settlement authority, then a memo would be -

1 - a memo would be written to City Council. The
2 attorney would sign off on it and the chief or
3 whoever has supervisory authority would sign it. If,
4 in fact, it's above the chief's dollar range, it
5 would then go through those same chains, but
6 ultimately it would be the deputy that would make the
7 final decision. And then, if it's past the deputy's
8 dollar range, it would be the Corporation Counsel
9 that would make the decision. But in each step -- in
10 each step there is discussion before it gets to City
11 Council.

12 COUNCIL PRESIDENT PRO TEM CONYERS:

13 Okay. My next question is -- my second question is
14 when there are multiple decisions in a law office,
15 everyone does not have to agree to the terms; is that
16 correct? Everyone doesn't have to agree to the
17 terms; somebody can opt out from wanting to settle on
18 a particular matter. Could that be the case?

19 THE WITNESS: I would say no.

20 COUNCIL PRESIDENT PRO TEM CONYERS: So
21 everybody has to agree?

22 THE WITNESS: I would say that
23 ultimately the decision to settle civil litigation
24 rests with the Corporation Counsel to say initially
25 if it's in the best interests of the City of Detroit.

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COUNCIL PRESIDENT PRO TEM CONYERS:

Okay. You're misunderstanding my question. Let me rephrase this question for you. In lawsuits where there are multiple defendants, such as, let's say the tobacco industry, everybody did not agree to the full settlement amount. In this particular instance, even though City Council members of this body agreed to settle per charter -- I'll get to that section. This body agreed to settle doesn't mean that the Mayor has to settle. He could have rejected that?

THE WITNESS: That's correct.

COUNCIL PRESIDENT PRO TEM CONYERS: So now, when you get to section 6-403 it says, "No civil litigation of the City may be settled without the consent of City Council"; City Council gave their consent, right?

THE WITNESS: That's correct.

COUNCIL PRESIDENT PRO TEM CONYERS: Okay. So even though we consent, the Mayor could still reject; is that correct?

THE WITNESS: That's correct.

COUNCIL PRESIDENT PRO TEM CONYERS: Okay.

COUNCIL MEMBER WATSON: Yeah, he did reject.

1 THE WITNESS: That's kind of what I
2 was trying to get to you, Councilwoman, that
3 ultimately after the settlement by the City of
4 Detroit was approved.

5 COUNCIL MEMBER WATSON: That he
6 rejected that.

7 COUNCIL PRESIDENT PRO TEM CONYERS: My
8 next question is when you talk about shutting things
9 down, could you explain that to me a little better?
10 Is that a part of trial strategy or is that kind of
11 like when the news media is out and doing all these
12 different things to publicize a case, and not just
13 this case but any case, that your job is to do what's
14 best in the interests of your client, and can you
15 just explain to us what you mean by shutting things
16 down?

17 THE WITNESS: The Brown/Nelthrope case
18 was a very public case; so was the Bowman case, so
19 was the Harris case. They all kind of flowed from
20 the same set of circumstances. Harris had not been
21 tried yet, and in my opinion -- I think Mr. Copeland
22 said it best -- we had invested a couple of weeks
23 prior in -- with a six and half million dollar jury
24 verdict on facts that were similar to that in Harris.
25 It was my job, I felt, to end all of that litigation,

1 to end all of that very public, very embarrassing
2 litigation for the City of Detroit, and I will tell
3 you that that kind of litigation has an impact on
4 every other subsequent litigation in the City of
5 Detroit. And it is important, and it was important,
6 that all of that come to some kind of closure, and
7 that all of that publicity, all of that
8 salaciousness, all of that crisp language or all of
9 those kinds of allegations in my mind be settled, put
10 to rest, and put behind the City of Detroit. I just
11 -- to me that was something that we did not need to
12 go through again. We did not need to go through a
13 similar trial as in Brown/Nelthrope as we would have
14 done in the Harris case. And I felt the Harris case
15 presented even more salacious factors than the Brown
16 and Nelthrope case.

17 COUNCIL PRESIDENT COCKREL: Council
18 Member Kenyatta.

19 COUNCIL PRESIDENT PRO TEM CONYERS:
20 He's gone.

21 COUNCIL PRESIDENT COCKREL: Then
22 Council Member Jones is next.

23 COUNCIL MEMBER JONES: Thank you.
24 Good afternoon.

25 THE WITNESS: Good afternoon.

1 COUNCIL MEMBER JONES: My first
2 question to you is what do you think is important in
3 what you report to Council and the requirements for
4 agreement? Do you think that Council is only
5 interested in the amount that is settled for, or what
6 do you think is important in what you report to
7 Council?

8 THE WITNESS: I think that Council is
9 interested in more than the settlement amount,
10 absolutely. I think Council is interested in the
11 rationale that a lawyer determines -- or indicates in
12 why they want to settle, the law that supports that
13 rationale as to why the case should settle.
14 Sometimes just the climate in which the case is
15 brought for trial and litigation is not good, so I
16 think those are all things that City Council wants to
17 know and should know.

18 COUNCIL MEMBER JONES: But you did not
19 feel that the Confidentiality Agreement was important
20 to Council or something that Council should know,
21 seeing how it was involving the settlement terms?

22 THE WITNESS: Council Member Jones, in
23 my viewpoint, I handled this settlement like I've
24 handled every other settlement that I've brought to
25 this body, and I have never brought, as I've

1 indicated before, the mechanics of the settlement
2 agreement and all the terms of the settlement
3 agreement to this body, and I've never brought, when
4 we have included confidentiality provisions in our
5 settlement agreements, to this body. So I believe
6 that I was handling this settlement exactly in the
7 same way that I had handled settlements before this
8 body.

9 COUNCIL MEMBER JONES: In the Lawsuit
10 Settlement Memorandum, you gave a very brief
11 highlight of the case. Gary Brown and Harold
12 Nelthrope, Walter Harris settlement for (inaudible).
13 In the Walter Harris settlement, you gave several
14 pages that was privileged and confidential. Is there
15 some reason why you only gave a very limited amount?
16 Is there a reason?

17 THE WITNESS: Sure. To me, the
18 Brown/Nelthrope facts were known to this Council; you
19 know, the -- the -- the rationale and the basis of
20 the lawsuit. I mean it was a very public case and it
21 had been in litigation since 2003. I'm not sure if
22 we had discussions prior or in past years regarding
23 this case, but in my viewpoint, this Council knew
24 about this case. And we had had a closed session
25 also about this case, so I didn't feel the need to go

1 through every factual development of the
2 Brown/Nelthrope case, or the litigation history of
3 the Brown/Nelthrope case. I believed that this
4 Council already knew that.

5 I did not believe that this Council
6 had as much information regarding the Harris case,
7 because there had never been any discussions in
8 closed session, or any questions or anything like
9 that, brought to me or presented to this body. I
10 know that this body knew that there was a companion
11 case out there, and I'm not sure that they knew that
12 Mr. Harris testified in the Brown case, but I did not
13 believe that they had as much specificity of facts as
14 they already did in the Brown matter. So that's why
15 you have that kind of more information, as you say,
16 on the Harris case, as opposed to the Brown/Nelthrope
17 case.

18 COUNCIL MEMBER JONES: You indicated
19 that you did not meet with Mr. Stefani until December
20 the 5th. Did you meet with the other co-counsel and
21 the counsel for the others in discussing this case
22 and discussing the formal arrangements, the rejection
23 that the Mayor had made; did you meet to discuss the
24 other documents?

25 THE WITNESS: When the Brown/Nelthrope

1 matter -- the verdict was provided, we had been in
2 trial since August 21st.

3 COUNCIL MEMBER JONES: I'm talking
4 about after.

5 THE WITNESS: I understand. I'm
6 trying to answer your question. And we had been
7 prepping for the trial since July. Obviously, I had
8 a lot of matters on my plate that I needed to attend
9 to litigation-wise, that I immediately had to hit the
10 ground running after this settled. We did not meet
11 face-to-face, the parties. We utilized the e-mail
12 and letters to communicate as it relates to the
13 settlement agreement. I think I've already said that
14 I did not draft the rejection or the acceptance from
15 the Mayor. I was not drafting those documents, so I
16 had no discussions, to answer your question,
17 regarding those documents. We were communicating as
18 it relates to what we wanted in the settlement
19 agreement and allocation letters, and that kind of
20 thing, via the e-mails.

21 COUNCIL MEMBER JONES: Has there ever
22 been a case where you were representing someone that
23 you did not divulge all of the information to the
24 benefits of the client, being City Council your
25 client?

1 THE WITNESS: Where I did not divulge
2 all of the information? There are some things that
3 are privileged even among individually-named clients.
4 There are some cases that -- I know that particularly
5 in employment matters; there are all kinds of
6 sensitive matters in employment matters. There are
7 all kinds of sensitive issues that arise in
8 employment matters that may not already be divulged
9 or cannot always be divulged. There are also times
10 when individual Council members may be what I
11 consider the main party, or the person who was
12 involved in a -- I'll say an employment controversy,
13 and I believe in those instances, I owe a duty to
14 that Councilperson as it relates to certain
15 communications between me and that Councilperson that
16 cannot be divulged if it is brought before this whole
17 body. So there are times when there are privileges
18 that adhere to individuals in cases that you cannot,
19 by professional responsibility, even disclose.

20 So yes, there are times when
21 everything cannot be disclosed to this body because
22 professionally and ethically I cannot disclose. But
23 to the best of my ability, the things that I can
24 disclose and that I have traditionally disclosed to
25 this body, I have done and I believe I did that in

1 this case.

2 COUNCIL MEMBER JONES: Thank you.

3 COUNCIL PRESIDENT COCKREL: I think
4 that may have been five. I'm not as good at my
5 counting as I may have been at 9:00 o'clock this
6 morning. Council Member Collins is next.

7 COUNCIL MEMBER COLLINS: Thank you,
8 Mr. President. Good afternoon.

9 THE WITNESS: Good afternoon.

10 COUNCIL MEMBER COLLINS: Why did you
11 feel you needed an attorney with you to answer our
12 questions?

13 MR. CAMPBELL: I make everybody look
14 good when I sit next to them.

15 COUNCIL MEMBER COLLINS: No you don't.

16 THE WITNESS: Council Member Collins,
17 there is a -- you know, because you asked the
18 question the other day. There is a prosecutorial
19 investigation involved in this matter, and I don't
20 presume to know everything about ethics, and I'm
21 certainly not a criminal lawyer. I felt like this is
22 a public hearing, I'm under oath, and I want to make
23 sure that I am not saying or doing anything that
24 would harm me in either of those arenas. So that's
25 why I have an attorney here today.

1 COUNCIL MEMBER COLLINS: If this
2 Council decided not to approve his contract, are you
3 prepared to pay him yourself?

4 THE WITNESS: I'll do what I have to
5 do to keep my license.

6 COUNCIL MEMBER COLLINS: Thank you.

7 MR. CAMPBELL: Can I have that
8 transcript -- please?

9 COUNCIL MEMBER COLLINS: Can you have
10 what?

11 MR. CAMPBELL: I'm referring to the
12 (inaudible) --

13 COUNCIL MEMBER COLLINS: To my
14 colleagues that are here today, I think this is a
15 doggone dirty shame that we have to have a City
16 employee who has had a great reputation, who probably
17 works extremely hard --

18 COUNCIL MEMBER WATSON: Yes, she does
19 outstanding public service.

20 COUNCIL MEMBER COLLINS: -- has a
21 grievance against her.

22 COUNCIL MEMBER WATSON: That's right.

23 COUNCIL MEMBER COLLINS: And feels
24 intimidated to the point that she needs an attorney
25 to speak to us, her employer. I think we need to

1 leave her alone because she is not the instigator of
2 this problem.

3 COUNCIL MEMBER WATSON: That's right.

4 COUNCIL MEMBER COLLINS: She didn't
5 start it or defend it. She has been a tool that has
6 been used.

7 COUNCIL MEMBER WATSON: That's right.

8 COUNCIL MEMBER COLLINS: I think that
9 it's appropriate that we talk to Mr. John Johnson,
10 corporate counsel appointed and served in that
11 capacity, and is duly bound to -- duly bound to make
12 sure the Law Department conducts itself according to
13 the Charter, not this lady. We've used up a lot of
14 time. I would not -- I would want the people to do
15 this to me, and I don't think we should do it to her.

16 COUNCIL MEMBER WATSON: That's right.

17 COUNCIL MEMBER COLLINS: I think that
18 --

19 COUNCIL PRESIDENT PRO TEM CONYERS: Is
20 that a motion?

21 COUNCIL MEMBER COLLINS: Well, I think
22 -- I'm not finished. I don't think I can stop you
23 all from questioning her, but there is not much you
24 can get from her. The one that needs to be here is
25 the Mayor and corporate counsel, but to -- for us to

1 keep digging at her while she's trying not to
2 incriminate herself -- she took an oath here. For
3 her not to incriminate herself and face perjury
4 charges, for her to be as honest about this as she
5 possibly can and retain her job, my heart feels for
6 her.

7 COUNCIL MEMBER WATSON: That's right.

8 COUNCIL MEMBER COLLINS: I think we
9 all should leave her alone and go on to the big fish.
10 We need to go after the people who had more decision-
11 making abilities. Do you know what I mean? So thank
12 you very much; no more questions from me. I hope you
13 all will decide not to -- I mean, you all have the
14 right to speak as much as you want, but go easy on
15 her because as you can see, she is trying to protect
16 herself while being a good citizen and employee. I
17 hope I put it into perspective for you. Thank you.

18 COUNCIL MEMBER WATSON: I said that in
19 my opening.

20 COUNCIL PRESIDENT COCKREL: Council,
21 we'll move on from here. Council Member Cockrel is
22 next.

23 COUNCIL MEMBER COCKREL: Thank you.

24 Ms. Colbert-Osamuede --

25 COUNCIL PRESIDENT COCKREL:

1 Microphone, please.

2 COUNCIL MEMBER COCKREL: I'm fading as
3 well. On this text message matter, which we've
4 talked a lot about today, if I remember your
5 testimony correctly, you indicated that you were
6 aware of them as an issue back in 2004?

7 THE WITNESS: That's correct.

8 COUNCIL MEMBER COCKREL: And that the
9 non-disclosure of these messages was really -- as the
10 City's lawyer, however you want to define the City,
11 the non-disclosure of these messages was a really
12 critical, critical, critical fact and therefore, you
13 know, something that was really being actively
14 pursued once it was known that Stefani had the
15 messages?

16 THE WITNESS: That along with settling
17 also.

18 COUNCIL MEMBER COCKREL: I understand.
19 Yes, I understand. I happen to share with you the
20 view that you had some of these depositions earlier
21 on, and Mr. Harris represented a really serious issue
22 in terms of disclosure for the Mayor and Ms. Beatty.
23 But be that as it may, if -- with all that as a
24 framework, based on your testimony today, I don't
25 understand how you could just assume that the

1 messages were turned over to the Mayor. Because the
2 lines were so -- you know, the lines were so clearly
3 drawn and you testified that you really didn't -- you
4 weren't a party in the dealing with them, then how
5 can you just assume that they were taken care of?

6 THE WITNESS: I probably should not
7 have.

8 COUNCIL MEMBER COCKREL: So you never
9 asked the Mayor's lawyers if they had them or
10 anything like that?

11 THE WITNESS: I knew that they were
12 going to receive them at some point, and I had a
13 relationship, I believe, a professional relationship
14 wherein I believed that they would secure those
15 documents.

16 COUNCIL MEMBER COCKREL: Professional
17 relationship with whom?

18 THE WITNESS: In terms of Mr. Copeland
19 and Mr. McCargo. I never -- I never doubted that or
20 never disbelieved that those documents or those
21 disks, as they had been described, would be out of
22 the hands of the Plaintiffs.

23 COUNCIL MEMBER COCKREL: Okay. I
24 guess I can't figure out how the team had
25 communicated, because everybody is testifying now you

1 were talking to each other, that everybody knows what
2 everybody else is doing. How -- if nobody -- nobody
3 is admitting to -- nobody is admitting to who changed
4 the draft of the settlement agreement to take out
5 approving it to monetary damages -- a monetary amount
6 only, and nobody is admitting how anybody knew how
7 the text messages were going to miraculously be
8 handled, I don't get it. How were you all
9 communicating if nobody is telling each other
10 anything, because that's what we're hearing for the
11 last day and a half, almost two days now?

12 THE WITNESS: I can only answer this
13 this way. You talked about lessons learned and
14 hindsight being 20/20, that's perhaps something that
15 I should have found out, "Do you have these
16 messages?"

17 COUNCIL MEMBER COCKREL: Okay. Final
18 question, and you are an outstanding public servant.

19 COUNCIL MEMBER WATSON: That's right.

20 COUNCIL MEMBER COCKREL: In the years
21 that I've been sitting on this Council, I have had
22 nothing but the highest regard for you
23 professionally. You know, there are people who are
24 outstanding public service and there are folks who
25 work for the City. You are an outstanding public

1 servant. I guess my question goes to someone who
2 cares as deeply about the City as you do, who has
3 worked with this Council on numerous issues over the
4 years, why did it not ever become, in dealing with
5 this case, something that you would say, you know, as
6 an attorney for the City of Detroit, that you are
7 clearly the governing body of the City, "I need to
8 tell you all something. There is this issue over
9 here about these text messages that if it ever
10 becomes public, there is serious, serious danger to
11 the City that we all love and protect every single
12 day that we're working?"

13 THE WITNESS: Again, Council Member
14 Cockrel, again, lesson learned and there is no doubt
15 that that is something that probably should have been
16 done.

17 COUNCIL MEMBER COCKREL: Thank you,
18 Mr. President.

19 COUNCIL PRESIDENT COCKREL: And on
20 that, I have just one final question for you. I
21 think that means I'm going easy on you, but it's an
22 important question and I just want to make sure I'm
23 clear.

24 I've heard what sounds like different
25 accounts, but maybe my memory is faulty. Who

1 initiated settling Harris along with Brown and
2 Nelthrope, was it the Law Department or was it the
3 Stefani? Because I've heard you mention throughout
4 your testimony that you felt it was very important
5 that Harris on certain levels be more important than
6 Brown/Nelthrope, but I also heard from Stefani the
7 other day something that suggested something
8 different. So who initiated it?

9 THE WITNESS: I only know that when I
10 went out to Mr. McCargo and Mr. Copeland in the
11 parking lot, I was told that Mr. Stefani now wants to
12 settle Harris. I know that I had been discussing
13 settlement with Mr. Stefani regarding Harris. I also
14 know that Mr. Stefani is not one of the easiest
15 person to discuss settlement with, so when, in fact,
16 Mr. Stefani -- it was related to me that Mr. Stefani
17 wanted to, so to speak, throw Harris into the pile, I
18 knew at that point in time I was not going to walk
19 away from a settlement of Harris, Brown, and
20 Nelthrope on that day.

21 COUNCIL PRESIDENT COCKREL: That was
22 my only question. Thank you. President Pro Tem is
23 next, followed by Council Member Jones.

24 COUNCIL PRESIDENT PRO TEM CONYERS:
25 Thank you. You testified that Mr. Johnson said that

1 Council Member Kenyatta wanted the settlement
2 memorandum by 9:00 a.m. the next day, and then you
3 appeared before City Council with the memorandum. So
4 would it be fair to say that it may have been
5 prepared hurried, or did you take a little more time
6 because you got there kind of late when it was almost
7 over?

8 THE WITNESS: I probably would have
9 taken more time, but the fact of the matter is, after
10 having been through facilitation all day and until
11 8:15 that night, I knew -- you know, I knew there was
12 no way I was going to get it done by nine. But, if
13 Council Member Kenyatta wanted that settlement
14 memorandum to him at that time, at that time I was
15 going to do my best to provide what I could as a
16 basis for the settlement. So would I have taken more
17 time? Maybe. But I believe -- as I said before, I
18 believe that I had handled the settlement in the same
19 manner that I had traditionally handled settlements
20 with this body.

21 COUNCIL PRESIDENT PRO TEM CONYERS:
22 And on that day that you got -- because I don't sit
23 on that committee, and we really didn't know about it
24 until it came before us on that following Tuesday,
25 did any member on that committee -- did the members

1 on that committee ask questions?

2 THE WITNESS: No.

3 COUNCIL PRESIDENT PRO TEM CONYERS:

4 None of the members asked that question?

5 THE WITNESS: I just recall them
6 saying they were glad that the matter was settled.

7 COUNCIL PRESIDENT PRO TEM CONYERS:

8 Okay. So my next question to you -- it's a statement
9 that I should make that I think we should go back to
10 full committee. That was something that should have
11 involved all of us, as opposed to just the committee.

12 So my next question to you is if you
13 disclose things between you and your client, whether
14 it's the City or any Council Member, you could be
15 sued personally yourself, or you could be brought
16 charges from the Bar Association -- or not the Bar,
17 but the Attorney Grievance Committee; is that
18 correct?

19 THE WITNESS: It's my understanding
20 that as an attorney, I have to retain certain
21 confidences and if a client thinks you disclosed
22 that, then yes, that could be a basis for a
23 grievance.

24 COUNCIL PRESIDENT PRO TEM CONYERS:

25 And had you ever at any point in time, throughout

1 this whole situation that was going on, seen the text
2 messages?

3 THE WITNESS: No, I have not.

4 COUNCIL PRESIDENT PRO TEM CONYERS:

5 Okay.

6 COUNCIL PRESIDENT COCKREL: We'll go
7 on to Council Member Jones. Although, for the
8 record, I'll make it crystal clear, that document --
9 the settlement document was distributed to all
10 Council members the same day it went to committee.
11 So we did all get it at the same time and, of course,
12 the meeting is always open to the public. Any
13 Council members who wanted to sit in on the committee
14 could have gone in and sat in. Council Member Jones
15 is next.

16 COUNCIL MEMBER COCKREL: I read it
17 that day.

18 COUNCIL PRESIDENT PRO TEM CONYERS: We
19 did that day; that's not the night before to get a
20 chance to look over it if you're not on that
21 committee.

22 COUNCIL PRESIDENT COCKREL: It was
23 given to Council members -- all Council members on
24 the same day that the committee members got it,
25 because they are Council members also, because I

1 remember getting it that day. Council Member Jones?

2 I have no further questions from any

3 other Council members, so that being the case, I'll

4 turn it back over to Mr. Goodman.

5 MR. GOODMAN: Trying to adhere to

6 Member Collins' admonition, I will keep it short.

7 Everybody is tired.

8 BY MR. GOODMAN:

9 Q You say there are times when an official of the City

10 of Detroit has been represented by you, as well as

11 the City, and that official may disclose certain

12 confidences to you that you do not feel comfortable,

13 or perhaps may not by law disclose to this body as a

14 whole; is that right?

15 A That's correct.

16 Q In this case, the disclosures, if there were such

17 disclosures, didn't come from your client. They came

18 from the attorney representing the other side of the

19 case; is that right?

20 A That's right, yes.

21 Q You have no obligation, no legal obligation other

22 than the general obligations dealing with one another

23 in communications -- communications between you and

24 Mr. Stefani were not privileged, were they?

25 A No, they were not.

1 Q Okay. You indicated that with regard to the
2 mechanics of the settlement, terms change all the
3 time. You only bring the major issues in front of
4 Council; is that right?

5 A That's correct.

6 Q In this case, one term -- or there were terms that
7 did not change but remained constant from October
8 17th until December 12th, and that term was that the
9 matters, the text messages and the existence of the
10 text messages were to be kept confidential; isn't
11 that right? That was a constant term that never
12 changed?

13 A Yes.

14 Q Finally, going to your Lawsuit Settlement Memorandum,
15 which is tab four, on page three of that document it
16 states, quote, "Harris alleges that the Mayor was
17 engaged in philandering activities. Harris claims to
18 have been witness to the Mayor's infidelity, and that
19 he was used to facilitate such activity." Down below
20 that, two paragraphs below it says, "Harris testified
21 in the Brown/Nelthrope trial. Harris's allegations
22 are inflammatory and salacious." I take it by that
23 you're referring to his allegations of sexual
24 activity on the part of the Mayor and perhaps Ms.
25 Beatty; is that correct?

1 A The Mayor and, I wouldn't say Ms. Beatty.
2 Q And others?
3 A And others.
4 Q Knowing that, and this was on October 18th, wasn't it
5 perfectly clear to you on October 17th that matters
6 regarding text messages, which were to be held
7 confidential -- that is that the text messages
8 themselves may include references to these kinds of
9 activity?
10 A No. I did not see them.
11 Q Okay. That's all I have.
12 COUNCIL PRESIDENT COCKREL: You have
13 no further questions?
14 MR. GOODMAN: No.
15 COUNCIL PRESIDENT COCKREL: All right.
16 MR. GOODMAN: Excuse me, Mr.
17 President.
18 COUNCIL PRESIDENT COCKREL: Yes.
19 MR. GOODMAN: I forgot that we had
20 agreed that we would -- I don't know if you or
21 President Pro Tem suggested this witness would have
22 an opportunity to make concluding remarks to this
23 body as a whole.
24 COUNCIL PRESIDENT COCKREL: That would
25 be fine.

1 THE WITNESS: First, I would like to
2 thank everybody for the very kind things that they
3 have said to me regarding my service to the City of
4 Detroit. I do appreciate that; it means a great deal
5 to me. I've made a very brief statement that I'd
6 like to read at this time.

7 In August of this year, I will have
8 served the citizens of Detroit as an attorney in the
9 Law Department for 17 years. I have served under
10 three mayors and four corporation counsels, and this
11 City Council. I'm a civil servant who began her
12 career as a junior assistant corporation counsel. I
13 was promoted through each classification, ultimately
14 being promoted to a chief assistant corporation
15 counsel. I have always endeavored to perform my
16 duties in good faith, and with a goal of providing
17 the best result for the City of Detroit.

18 Throughout the events of these past
19 few months, I have come to know that I have earned
20 the respect of my colleagues, opposing counsel, and
21 jurors, City employees, and even union leaders who I
22 often sit across the table from. It is my great
23 pleasure to work with attorneys and employees of the
24 Law Department, some with fewer years of service than
25 I, and some with greater years of service than I.

1 All of us share dedication to provide quality, equal
2 representation to every entity of this government.

3 Over the past several months, the
4 professional standards, integrity, and reputation of
5 the entire department has been questioned in some
6 form. This is totally undeserved. My colleagues
7 were among the first group of employees to recognize
8 the budget constraints of this City and voluntarily
9 took a reduction in pay. My colleagues have served
10 the City of Detroit with limited resources, often
11 obtaining extraordinary results for the citizens and
12 the municipal corporation known as the City of
13 Detroit.

14 As Law Department attorneys, we
15 recognize the privilege and responsibility associated
16 with the practice of law, in particularly, the public
17 sector practice of law. I want to take this
18 opportunity to publicly applaud my colleagues
19 whenever they come to work at the Law Department,
20 without public response there or fanfare, or grand
21 indictment, to review contracts, to prepare leases
22 and land wills, to write orders to litigate claims,
23 write legal opinions, provide advice and counsel,
24 write appellate briefs, and a myriad of other tasks
25 to numerous to articulate.

1 In spite of the current circumstances,
2 today I would like to publicly say that the Law
3 Department is invaluable and indispensable to the
4 City of Detroit. Thank you.

5 COUNCIL PRESIDENT COCKREL: Thank you
6 very much. Thank you very much. The witness may be
7 excused, and if there is nothing else to come before
8 this body --

9 COUNCIL MEMBER WATSON: Mr. President?

10 COUNCIL PRESIDENT COCKREL: Yes.

11 COUNCIL MEMBER WATSON: I'm sorry; I
12 just want to make it known I'm personally privileged
13 the matriarch of the Detroit (inaudible) 95 year-old
14 (inaudible) has jointed the ancestors who -- who do
15 the work and matriarch of the Detroit NAACP -- great
16 -- organized labor, and the person who has registered
17 more voters -- more registered voters in the City of
18 Detroit than anyone else, long-term activist, and one
19 of the plaintiff's in the lawsuit which got
20 (inaudible). So I just wanted to pay homage to the -
21 - her legacy, the magnificent -- founder of the women
22 in the NAACP. Her services are scheduled to be April
23 19th in front of (inaudible). Thank you, Mr.
24 President.

25 COUNCIL PRESIDENT COCKREL: Can we

1 have a brief moment of silence?

2 COUNCIL MEMBER REEVES: Mr. President,
3 can I join -- can I join in that comments for Donna
4 Walters, who passed away --

5 MULTIPLE SPEAKERS: (Talking over)

6 COUNCIL PRESIDENT COCKREL: Now, if
7 there is nothing else to come before this body, we
8 are ready now for public comment, so if there are any
9 members of the public who would like to come forward
10 and address City Council, they may do so.

11 UNIDENTIFIED SPEAKER: What time
12 tomorrow?

13 COUNCIL PRESIDENT COCKREL: Nine
14 o'clock.

15 UNIDENTIFIED SPEAKER: Are you sure
16 it's 9:00 o'clock?

17 COUNCIL PRESIDENT COCKREL: As far as
18 I know, it's still 9:00 o'clock.

19 UNIDENTIFIED SPEAKER: Is it 9:00
20 o'clock tomorrow or 10:00 o'clock?

21 COUNCIL PRESIDENT COCKREL:
22 Unfortunately, we had to move the podium that we
23 usually have here in order to accommodate the
24 witnesses. If you want to come right down. Maybe if
25 we could turn that microphone around, you could speak

1 into that microphone. State your full name for the
2 record. You have two minutes.

3 MR. SCHWARTZ: Thank you. My name is
4 Howard Schwartz. I'm coming here on a related -- on
5 a matter not related to your previous agenda. I am a
6 commercial real estate broker licensed in the State
7 of Michigan, and a proud property owner of property
8 in the City of Detroit. My client owns a property
9 and I believe the correct address is 1284 Randolph,
10 and may be around in a minute or so. There was a
11 building that was in the newspapers that the back of
12 the building facing DuPont (ph) fell down. He went
13 to court this morning to ask for an injunction so it
14 can be heard that the building can be saved. It was
15 turned down. He feels he has no place else to go. I
16 would like to ask you to try to save a 100 year old
17 building. He has a (inaudible) that believes the
18 building can be saved. I certainly think that the
19 certain concern that everyone has about public safety
20 is number one (inaudible) when the building collapses
21 had (inaudible). But if the building can be saved --
22 it's a 100 year old building; it's a gorgeous
23 building. The people that own it want to save it;
24 they have the money. It's insurance money; they are
25 not poor people. If that building can be saved, I'm

1 asking you to help them so that a proper hearing can
2 be held, so the building can be evaluated properly,
3 and perhaps the building (inaudible). Thank you for
4 listening.

5 COUNCIL PRESIDENT COCKREL:

6 (Inaudible) if you have somebody from RAD get him
7 connected with the City Planning Commission, and
8 perhaps they can use their good offices and resources
9 to try to see what can be done. I'd like to have
10 this issue referred to committee on public health and
11 safety as well.

12 MR. SCHWARTZ: They plan on tearing
13 this building down tomorrow morning.

14 COUNCIL MEMBER COCKREL: So someone
15 has to call right now to find out what's up.

16 MR. SCHWARTZ: We've called down
17 there. I didn't reach his office because no one
18 picked up the phone. But they want the court to
19 either have the landlord tear the building down
20 tomorrow morning or someone from the City office do
21 it, or we will tear the building down tomorrow
22 morning. But there is a timing issue here that I
23 want to make you aware of.

24 COUNCIL MEMBER WATSON: (Inaudible)

25 MR. SCHWARTZ: I don't know where it's

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at.

COUNCIL PRESIDENT COCKREL: Well, the issue at this point is it is 5:20 and the building safety department is probably closed. There should be a cell number. I'll give them a call. I'll give them a call after we leave here tonight to see if we can take a closer look at this before the action is taken. I think you've raised some very valid issues and I will call them after I leave here.

MR. SCHWARTZ: I would like to follow up, and who do I follow up with?

COUNCIL PRESIDENT COCKREL: I can give you my number; it's 313 -- well actually, Mr. Bower (ph) or Ms. Miller (ph), do either of you have a business card? Can you give him one of your cards? Their number is at the bottom. You can follow up with me as well.

COUNCIL MEMBER COCKREL: Who's tearing this down tomorrow?

MR. SCHWARTZ: Would you like me to call you, sir?

COUNCIL PRESIDENT COCKREL: I'll give you my number.

MR. SCHWARTZ: That's fine.

COUNCIL PRESIDENT COCKREL: 224-4505.

1 COUNCIL MEMBER COCKREL: (Inaudible)

2 COUNCIL PRESIDENT COCKREL: And in the

3 meantime, if you'd give one of your cards or leave

4 your number with Ms. Miller.

5 COUNCIL MEMBER COCKREL: If it's

6 coming down tomorrow, who is taking it down?

7 COUNCIL PRESIDENT COCKREL: Mr.

8 Schwartz would have to answer that.

9 COUNCIL MEMBER COCKREL: Well, he can

10 find out.

11 COUNCIL PRESIDENT COCKREL: I think

12 he's on the phone now, so let's give him a minute to

13 do that.

14 MR. SCHWARTZ: This lady here?

15 COUNCIL PRESIDENT COCKREL: Yes.

16 MR. SCHWARTZ: (Inaudible) Thank you.

17 COUNCIL PRESIDENT COCKREL: You're

18 quite welcome. I did see one other person who wanted

19 to address the public. I believe that's two, but Ms.

20 Lacey raised her hand first. I think even though we

21 all know you, if you could state your full name for

22 the record.

23 COUNCIL MEMBER COCKREL: Excuse me

24 just one second. It's my understanding that Mr.

25 (Inaudible) is on vacation, so it would be Sheila

1 Jackson (ph) that has to be contacted right away.

2 MS. LACEY: Hi. My name is Mary
3 Lacey. (Inaudible) First of all, I'd like to tell
4 people that (inaudible). People can come out there
5 and bring (inaudible) instead of constantly coming to
6 City Council, who have so many other problems.
7 (Inaudible) City Council. (Inaudible).

8 Second of all -- excuse me -- I'd like
9 to thank all of the Councilmen for showing up for the
10 Mayor's speech. (Inaudible) when the Mayor's voiced
11 his opinion, they could have stood up and left. And
12 I appreciate it because there are so many other
13 people (inaudible) in Detroit, and I hope you guys
14 think about that when you address the public,
15 (inaudible). And finally, what about this
16 (inaudible)? I mean in charter, it specifies the
17 rules and regulations that no member of the boards
18 shall be a resident of the City of Detroit. I am
19 (inaudible) that they cannot be part of elected
20 office. (Inaudible) the Mayor (inaudible). But
21 anyway, so to me, I think you've got the best system
22 in the world, checks and balances, where the charter
23 book (inaudible) and if ordinary citizens can
24 understand the charter book, surely lawyers can,
25 unless they got their law license off of e-mail.

1 (Inaudible) even has authority to conduct
2 investigations of its own subpoenaed witnesses, so
3 why is there all this trouble when the charter tells
4 everyone that it's a check and balance and you can be
5 held accountable? Thank you.

6 COUNCIL PRESIDENT COCKREL: Thank you,
7 Ms. Lacey. One of my colleagues wants to respond.

8 COUNCIL MEMBER COCKREL: Ms. Lacey,
9 just for the record and just so you know, I
10 appreciate the issue your raising, but for the
11 record, Mr. Turner recused himself of any hearing
12 regarding the matters relating to the Mayor that may
13 come here. (Inaudible)

14 MS. LACEY: Correct.

15 COUNCIL MEMBER COCKREL: He recused
16 himself from hearing matters related to the matter.

17 MS. LACEY: (Inaudible) because
18 residents should not be any elected official.

19 (Inaudible)

20 COUNCIL MEMBER COCKREL: (Inaudible)

21 MS. LACEY: It's right in the charter.

22 COUNCIL MEMBER COCKREL: (Inaudible)

23 MS. LACEY: (Inaudible)

24 COUNCIL MEMBER WATSON: Two Council
25 Members are ready to (Inaudible).

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MS. LACEY: Thank you.

COUNCIL PRESIDENT COCKREL: We'll take a look at that immediately. Yes, ma'am. Your full name for the record?

MS. MCKANTZ: Yolanda McKantz and I'm from the northeast district community relations. I am the vice president there.

COUNCIL MEMBER COCKREL: From where?

MS. MCKANTZ: The northeast district community relations, vice president. I'm here this afternoon because I have two major issues. One is a house over on (inaudible) caught on fire, and the fire hydrant -- the fire trucks could not get the fire hydrants working, so they had to go a block away in order to get that fire put out. I understand from the fire department that this past Tuesday that they contacted the water department, and they were placed on a waiting list. Right now I have two fire hydrants in my area that are not working, along with the water coming up out of the ground on Davison -- East Davison between Nine and Mount Elliot. My next thing is --

COUNCIL MEMBER WATSON: Hold on. Before you move on to the next thing, Mr. President, let's have some follow up on the water department

1 issue. It might have to wait on (inaudible).

2 COUNCIL PRESIDENT COCKREL: Council
3 Member Watson, we have a representative of the fire
4 department here who I was just kind of communicating
5 silently with.

6 COUNCIL MEMBER WATSON: (Inaudible)

7 COUNCIL PRESIDENT COCKREL: He's the
8 captain, or you've been promoted again? Deputy
9 Chief.

10 COUNCIL MEMBER WATSON: Deputy Chief.

11 COUNCIL PRESIDENT COCKREL: Deputy
12 Chief (inaudible) is going to meet with you regarding
13 that issue of the fire hydrants.

14 COUNCIL MEMBER COCKREL: So it's up to
15 the fire department to fix this? I mean the water
16 department to fix the hydrant.

17 COUNCIL PRESIDENT COCKREL: But he can
18 still facilitate that contact; they work closely on
19 the fire hydrants.

20 COUNCIL MEMBER WATSON: The Mayor's
21 office has got to talk to the water department,
22 because they've got the fire department on a waiting
23 list.

24 COUNCIL PRESIDENT COCKREL: What's the
25 other issue?

1 MS. MCKANTZ: We have property in that
2 area that had been foreclosed by local banks, or
3 mortgage companies or lenders, who will not
4 compromise or talk to the people within those
5 neighborhoods to either purchase that property or try
6 to keep the property from the vandals taking it over.
7 They tell us, and what they're doing -- well, they
8 don't tell us; they just keep putting us off. The
9 numbers that they place on these houses, there is no
10 chance. You can leave messages to them and nobody
11 will answer.

12 The other thing is there are some
13 investors, Los Angeles, California, Las Vegas,
14 Nevada, and South Carolina who will come in here and
15 purchase our property, going back to the sunshine
16 state, and leaving them in our neighborhood. Why
17 can't we do something about that, or allow the people
18 in the neighborhood who may be interested in
19 purchasing those properties, to purchase them at the
20 bulk rate like their doing?

21 COUNCIL PRESIDENT COCKREL: Council
22 Member Watson?

23 COUNCIL MEMBER WATSON: Thank you, Mr.
24 President. I carry the title transfers. We have
25 been planning a special foreclosure town hall meeting

1 in June. We need a star witness; we need subject
2 matter experts here to resolve issues about
3 foreclosure and to help people walk through the steps
4 of accessing properties in their neighborhood. I'm
5 going to have one of my -- (inaudible) there get all
6 of your information. (Inaudible) I appreciate it. I
7 just want to make you aware that (inaudible), she's a
8 staff member who you can contact to get to the state
9 legislature.

10 MS. MCKANTZ: Okay. Thank you.

11 COUNCIL MEMBER WATSON: Thank you so
12 much.

13 COUNCIL PRESIDENT COCKREL: Any other
14 members of the public? Seeing not, I'll bring the
15 public commentary to a close, and before we adjourn,
16 it has been confirmed that our first witness will be
17 here at nine?

18 MR. GOODMAN: Yes, but that first
19 witness will not be Mr. Johnson. He cannot be here
20 because his lawyer cannot be here until 11:30. So
21 we'll start the hearing with other testimony until he
22 gets here.

23 COUNCIL MEMBER COLLINS: Who will it
24 be?

25 MR. GOODMAN: I'm hopeful that we will

1 start with Attorney Edwards, and maybe move on to
2 Dean Wu and actually, with any luck at all, we can
3 get both of them accomplished by the time Mr. Johnson
4 arrives.

5 COUNCIL PRESIDENT COCKREL: I think we
6 should strive to do that, because I have a feeling
7 we're going to want to spend quite a bit of time with
8 Mr. Johnson, the whole afternoon probably and into
9 the early evening.

10 MR. GOODMAN: I will strive.

11 COUNCIL PRESIDENT COCKREL: Yes.
12 Council Member Jones?

13 COUNCIL MEMBER JONES: Is there a
14 committee meeting, budget finance meeting?

15 COUNCIL MEMBER COCKREL: Eight-thirty
16 tomorrow morning.

17 COUNCIL MEMBER JONES: Are we going to
18 be complete with that at the first presentation at
19 the time of the --

20 COUNCIL PRESIDENT COCKREL: If there
21 is nothing else, then a motion to adjourn; support?

22 COUNCIL MEMBER JONES: Support.

23 COUNCIL PRESIDENT COCKREL: Support.
24 Moving to support; all in favor? We will stand
25 adjourned.

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(WHEREUPON, at 5:30 p.m., legislative
hearing concluded)

1 STATE OF MICHIGAN)
) SS
2 COUNTY OF OAKLAND)
3
4

I HEREBY CERTIFY that this transcript, consisting of
5 two hundred sixty-one (261) typewritten pages, is a
6 complete, true, and correct record of the legislative
7 hearing held on April 10, 2008.
8

9
10 *Deanna L. Harrison*

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